OECD Regulatory Policy Outlook 2021

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Preface

Against a backdrop of a once-in-a-century global health and economic crisis, the management of the global commons presents a very real challenge. The deterioration of trust in governments, experts, and evidence has made reaching consensus in policy making more difficult. At the same time, there has been increased pressure for more rapid decision making to help address real economic, environmental and social issues. We need to rethink the way governments make rules. The important need for trusted, evidence-based, internationally co-ordinated, and well-implemented and administered regulation to deliver on climate action, harness innovation and manage interconnected global risks make this all the more urgent.

As we approach the 10th anniversary of the 2012 OECD Recommendation on Regulatory Policy and Governance, it is timely to look back on Member countries' achievements as well as to consider the ongoing and emerging challenges for regulatory policy. As we pointed out in the 2015 and 2018 OECD Regulatory Policy Outlooks, regulating well can be challenging even in "normal times". There are many technical complexities and uncertainties to grapple with. Often there are political pressures and constraints to deal with. Unless that is done well, the regulatory initiatives that follow can be inadequate or even counter-productive. They may have unintended consequences, including for those who were never intended to be captured by a new regulation. They may achieve their goals at excessive cost. In some cases, they may not serve their goals at all or, worse, have a negative impact.

These concerns need to be at the forefront of policy makers' minds as they upgrade regulatory policy to address today's challenges. The post-pandemic rebuilding of economies and society will require changes to regulations that underpin the market economy, better balancing economic efficiency with sustainability goals, equal opportunity and resilience. It will also require governments to enhance their capacity to co-operate on regulatory matters to face increasing transboundary challenges.

Sound regulatory policy has never been more important. The ability to provide clear, well-reasoned and evidence-based public policy will help to rebuild, refocus and reform economies for decades to come, as well as to enhance trust. Demonstrating where rules need updating and highlighting superior alternatives to the status quo are two of the core strengths of regulatory policy.

Reflecting these challenges, the third edition of the *Regulatory Policy Outlook* calls on governments to engage in a "regulatory reboot" for the 21st century, as the focus shifts towards increased consideration of cross-border flows, environmental issues, inequality, risk, innovation, and foresight in public policies. The recent OECD Recommendation for Agile Regulatory Governance to Harness Innovation aims to help countries in this regard. At the same time, the building blocks of better regulation will be as important as ever – yet, in some countries, they are worryingly weak. Less than one-quarter of OECD members systematically assess whether rules have worked as intended. Countries need to redouble their efforts in the traditional regulatory policy tools of impact assessment, stakeholder engagement, and *ex post* evaluation.

For more than 60 years, the unwavering focus of the OECD has been to preserve individual liberty and to increase economic and social well-being – in short, to promote better policies for better lives. Better policies begin with better policy making. The *Outlook* shows governments the path to improve rule-making for a more balanced, sustainable and cohesive global society.

Mathias Cormann,

Secretary-General,

Organisation for Economic Co-operation and Development (OECD)

Foreword

In just three years since the last *Regulatory Policy Outlook*, the world has drastically changed. The COVID-19 pandemic has demonstrated to all that how a country regulates can, literally, be a matter of life or death. Beyond the health crisis, the rapid digital transition and climate change all require governments to be flexible, regulate faster and better, and co-operate globally. As the pandemic recedes, regulatory reforms are an essential government tool for stimulating innovation and productivity during the recovery.

The triennial *Regulatory Policy Outlook* identifies current and future trends in regulatory policy. It provides decision makers and practitioners with a solid basis for making regulatory policy fit for purpose. The *Outlook* compiles evidence on the implementation of the 2012 *OECD Recommendation on Regulatory Policy and Governance*, detects gaps and suggests core reforms. It is based on empirical evidence, research and data, including the *2021 Indicators of Regulatory Policy and Governance*. Reflecting practical experiences, discussions and lessons learned from OECD members and partner countries, it offers many examples of how to benefit from sound regulatory policy and implement change. In particular, this third edition provides insights on how to improve the quality of laws and regulations to ensure a strong recovery from the COVID-19 crisis and address other global challenges. The ultimate goal of the *Outlook* is to help improve the quality and effectiveness of laws and regulations going forward, by ensuring they are trusted, based on evidence, developed in consultation and co-operation with stakeholders – including other countries, where relevant – and appropriately enforced.

Chapter 1 explains how regulatory policy needs to adjust to address global challenges such as climate change, health crises and rising inequalities; to reap the benefits of rapid and diffuse technological change; and to place countries on a stronger and surer recovery path. Chapter 2 provides an overview of trends in the use of regulatory management tools in OECD countries, including stakeholder engagement and the use of evidence in rule-making. Chapter 3 analyses trends in regulatory oversight, looks at how regulatory oversight bodies co-ordinate regulatory policy across government, and provides suggestions on how to make oversight more agile and effective. Chapter 4 explores how to strengthen international co-operation on rule-making to tackle global challenges, avoid unnecessary barriers to trade and learn from each other's experiences. Chapter 5 identifies trends and good practices in the governance of economic regulators as well as areas for improvement. Chapter 6 discusses risk-based regulatory design and implementation.

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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 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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Abbreviations and acronyms

ARCEP	French Electronic Communications, Postal and Print Media Distribution Regulatory Authority (*Autorité de régulation des communications électroniques, des postes et de la distribution de la presse*)
ALGA	Australian Local Government Association
ASEA	Agency for Safety, Energy and Environment (*Agencia de Seguridad, Energía y Ambiente*)
ASTM	ASTM International
ATR	Dutch Advisory Board on Regulatory Burden
BEIS	Department for Business, Energy and Industrial Strategy, United Kingdom
BI	Behavioral insights
BIPM	International Bureau for Weights and Measures (*Bureau International des Poids et Mesures*)
BRE	Better Regulation Executive of the United Kingdom
CCNR	Central Commission for the Navigation of the Rhine
CDR	Cabinet Directive on Regulation of Canada
CETA	Canada-EU Comprehensive Economic and Trade Agreement
CFIA	Canadian Food Inspection Agency
CNMC	Spanish National Commission of Markets and Competition (*Comisión Nacional de los Mercados y la Competencia*)
COAG	Council of Australian Governments
CONAMER	Mexican National Commission for Better Regulation (*Comisión Nacional de Mejora Regulatoria*)
COVID	Coronavirus Disease
COVID-19	Coronavirus disease of 2019
CPTPP	Comprehensive and Progressive Agreement for Trans-Pacific Partnership
CQC	Care Quality Commission
DBA	Danish Business Authority
DIT	Department of International Trade of the United Kingdom
DPMC	Australian Department of the Prime Minister and Cabinet
EBR	Ethical business regulation

EU	European Union
FAO	Food and Agriculture Organization of the United Nations
FCDO	Foreign, Commonwealth and Development Office of the United Kingdom
FICIL	Foreign Investors'Council in Latvia
FSVP	Foreign Supplier Verification Programs
FTA	Free Trade Agreement
GFSI	Global Food Safety Initiative
GMP	Good Manufacturing Practices
GRPs	Good Regulatory Practices
HAKOM	Croatian Regulatory Authority for Network Industries (*Hrvatska Regulatorna Agencija za Mrežne Djelatnosti*)
HSE	Health and Safety Executive
ICAO	International Civil Aviation Organization
ICT	Information communication technology
IEA	International Energy Agency
IGO	Intergovernmental Organisations
ILO	International Labour Organization
IMF	International Monetary Fund
IMO	International Maritime Organization
INTERPOL	International Criminal Police Organization
IO	International Organisations
IRC	International regulatory co-operation
iREG	Indicators of Regulatory Policy and Governance
ISO	International Organization for Standardization
IVC	Inspection Surveillance and Control (*Inspección Vigilancia y Control*)
JRC	Joint Research Centre
L.P.	Liquefied petroleum
MBIE	Ministry of Business, Innovation and Employment of New Zealand
MFAT	Ministry of Foreign Affairs and Trade of New Zealand
MRA	Mutual Recognition Agreement
NER	Network of Economic Regulators
NERV	Czech Republic's National Economic Council
NFRC	Australian National Federation Reform Council
NGOs	non-governmental organisations
NRA	National Regulatory Authority
OBPR	Office of Best Practice Regulation (Australia)
OCS	Office of the Council of State (Thailand)
OIE	World Organisation for Animal Health

OIML	International Organisation for Legal Metrology (*Organisation Internationale de Métrologie Légale*)
OMB	United States Office of Management and Budget
OPSS	Office for Product Safety & Standards
OSH	Occupational Safety and Health
PAFER	Performance Assessment Framework for Economic Regulators
PIR	Post-implementation review
PMR	Product Market Regulation
PUC	Latvian Public Utilities Commission
RAC	Rating Audit Control
RIA	Regulatory impact assessment
ROB	Regulatory oversight body
RPC	Regulatory Policy Committee of the United Kingdom
RSB	Regulatory Scrutiny Board
SaMBA	British Small and Micro Business Assessment
SDGs	Sustainable Development Goals
SICOPRE	Sistema Control Previo
SME	Small and Medium-sized Enterprise
SPS	Sanitary and Phytosanitary measures
SUCOP	Sistema Único de Consulta Pública
TBS	Treasury Board Secretariat of Canada
TBT	Technical Barriers to Trade
TGN	Transgovernmental Network of Regulators
ToRs	Terms of Reference
TRA	Threat-Risk Assessment
UAE	United Arab Emirates
UNWTO	World Tourism Organization
US FDA	United States Department Food and Drug Administration
USAID	US Agency for International Development
USMCA	United States-Mexico-Canada Agreement
UTAIL	Technical Unit for Legislative Impact Assessment (Portugal)
WCO	World Customs Organization
WTO	World Trade Organization

Executive summary

The COVID-19 pandemic has underscored the role of regulation and shed light on the urgent need for a transformation of the way rules are made and implemented. COVID-19 has exposed gaps in domestic and international rule-making that have cost lives and livelihoods. While regulating in times of crisis requires major adjustments to processes, in some settings shortcomings – in evidence, in impact and risk analysis, in stakeholder consultation, or in co-operation with other governments – have carried a heavy price for societies. To a certain extent, the crisis has also shown growing mistrust between parts of societies and their governments. Correcting course now is critical for addressing current and future challenges where regulations have a significant bearing on the success of the responses, including climate change and other environmental threats.

COVID-19 highlights that global solutions are required to tackle global problems. Governments have been forced to recognise that they cannot regulate in isolation – their decisions have an impact on other countries and are ineffective to varying degrees if not co-ordinated with other countries. International regulatory co-operation has been central throughout the pandemic response, helping to maintain trade in essential goods such as food and medical products. The collective response to the emergency also sheds light on how countries need to proactively manage the global commons. However, while there might be consensus that domestic rule-making should take international considerations into account, this is not often put into practice. Less than one-fifth of OECD members systematically reflect international dimensions in domestic rule-making.

Moreover, to be most effective, regulations need to weigh potential risks and trade-offs; this is all the more important during a crisis. However, only seven OECD member countries and the European Union report having an overall risk-and-regulation strategy including requirements for systematically considering risk when developing rules. As demonstrated during the crisis, however, even these countries did not always effectively base their regulatory decisions on evidence-based risk analysis.

Governments need to consider more holistically all societal impacts of proposed rules. While they have improved the range of impacts assessed, gaps remain, particularly in areas of gender inequality, poverty, and innovation. Enhanced oversight will be critical to ensure that decisions are based on the best available evidence, consider all relevant impacts and contribute to greater societal resilience. Governments also need to work in partnership with society to gain a more complete understanding of potential impacts on all segments of the population. Yet, less than one-quarter of OECD members systematically inform the public about potential forthcoming rules.

Embracing new technologies is critical for promoting social justice, tackling inequalities and restoring trust in government action. The pandemic has also demonstrated the importance of allowing regulatory flexibility in emergencies, and the need to make the most of new technologies. Innovation has played a crucial role in combatting the current crisis and will continue to do so. Yet, only half of OECD member countries oversee new policies' impact on innovation. Governments need to establish more agile, flexible and resilient regulatory practices to foster the innovation that will help address the world's most pressing social and environmental challenges while protecting health, safety, privacy and individual freedoms.

Regulators have played a central role in providing essential services throughout the pandemic, often within compressed timeframes. As risks are heightened when decisions need to be taken quickly, monitoring and evaluation become all the more important. Yet, only half of regulators publish information on the quality of their regulatory processes. Further investment in improving performance assessment and reporting will be crucial to ensure that they can adequately address future challenges.

Governments spend far too little time checking whether rules work in practice, not just on paper. Less than one-quarter of OECD members systematically assess whether regulations achieve their objectives. Incentives for improvement are currently weak: less than one-third of OECD member countries have a body in charge of checking the quality of reviews of existing regulation. Governments need to move past the traditional "set and forget" rule-making mindset and develop "adapt and learn" approaches. The pandemic has also made a general lack of foresight painfully clear. Governments must invest in skills and capacities to better anticipate future crises and mitigate their impacts, which tend to disproportionality fall on the less fortunate. They must also improve how they assess, communicate, and manage risks – including by more systematically reviewing regulations to ensure they correspond to the latest evidence and science.

People are more likely to view regulations as fair if they are engaged in the deliberative process and the outcomes of consultations are clearly explained. One of the lessons of the COVID-19 pandemic is that when people feel their voice is heard, they are more likely to comply with and less likely to complain about any resulting regulation. Open discussion about a society's rules is fundamental to finding the right balance among differing interests across society. Moreover, it underpins trust and transparency in the actions of government. Citizens, businesses and civil society can provide valuable information on how potential rules might actually work on the ground. Consultation on draft laws is now relatively well established across OECD countries, but citizens and businesses are systematically consulted in less than one-quarter of OECD member countries at early stages of the process to identify alternative policy options. Yet, this is exactly when their input can make the biggest difference in identifying the appropriate policy options and ensuring rules work in practice. Furthermore, around three-fifths of policy makers do not provide public responses to comments received during consultations.

1 Regulatory policy 2.0

This chapter provides a glance at the future and attempts to set a scene for regulatory policy for the next decade, one that is more agile, better reflects changing environment, including fast technological changes, and evolving government priorities but one which is still firmly set in the foundations described by the existing OECD Recommendations relating to regulatory policy.

Key findings

- **Global crises and complex policy problems are forcing governments to consider how to regulate better, both for now and for the future.** The existing concept of "better regulation" is grounded in a framework of institutions, tools and processes developed over the last 30 years. As demonstrated in the 2015 and 2018 Outlooks, regulating in "normal times" is already challenging but global crises such as the COVID-19 pandemic has placed even bigger stress on systems of regulatory policy making. Coupling this with complex policy problems – such as the platform economy, inequality, climate change and ageing populations – and headwinds of hyper partisanship, distrust in public institutions, and the pace of technological change, it is clear that new approaches are needed to address current issues and put government in a position to respond effectively to future problems.
- **A "regulatory policy 2.0" agenda offers an opportunity to adapt, amend and create a more agile framework for better regulation.** This chapter seeks to elaborate elements of this problem and opportunities for progress. It takes what has been created over the last few decades and discovers what is still fit for purpose and what needs to be adapted for the future of regulation. It starts by recognising that the implementation of regulatory policy is suffering from significant gaps. First, regulatory policy remains underutilised by governments compared with the attention that is given to tax and spending measures and the efforts made in those areas. Second, it continues to be a trend that regulatory management tools are under-developed, insufficiently implemented or applied with unsatisfactory effects. Third, by relying on conventional models of human action, regulators can fail to consider behavioural barriers and biases that limit the effectiveness of implementation of regulatory policy.
- **Technological innovation is significant driver of this agenda, forcing governments to move past the traditional "regulate and forget" mindset and develop "adapt and learn" approaches.** This will enable societies to realise the benefits of innovation while upholding protection for citizens and the environment. Governments across the globe face new challenges that strain capacity and create a strong need to rethink and reinvent many aspects of regulatory systems. The case for change stems from the regulatory challenges and the opportunities brought by technological developments (including to strengthen regulatory capacity), as well as new trends or significant events such as the COVID-19 pandemic. The social and economic disruption that the pandemic has wrought further highlights the strategic importance of developing more agile and co-ordinated regulatory approaches to increase responsiveness and resilience in changing environments.
- **The regulatory challenges brought by emerging technologies warrant a paradigm shift in policy making and administration.** Governments must ensure that the innovation that can power economic growth and solve the world's most pressing social and environmental challenges is not held back by regulations designed for the past. Likewise, they should avoid innovation being hindered by rigid enforcement that focuses on the letter and not the goal of rules. More agile, flexible and resilient governance and regulatory practices are needed to unlock the potential of emerging technologies, while upholding protection of health and safety, environment, social justice, and other societal goals.
- **Better use and adaptation of regulatory management tools to improve the agility, quality and coherence of the rule-making system is essential.** Traditional regulatory management tools, such as regulatory impact assessment (RIA), stakeholder engagement and *ex post* evaluation, need to be adapted to help governments navigate the challenges and the opportunities brought by transformative changes and choose the right approach – regulatory or

otherwise – to improve societal welfare. These new challenges also call for an increase in regulatory coherence, aligning regulatory governance with strategic governmental goals such as the Sustainable Development Goals. More recent pillars of regulatory management, such as international regulatory co-operation, must be employed to improve the effectiveness of regulatory frameworks. This has become ever more evident with digitalisation that ignores national or jurisdictional boundaries while drastically increasing the intensity of cross-border flows and transactions.

- **Applying lessons learned from behavioural insights (BI) can improve the institutions and processes of regulatory policy making, including throughout the policy cycle.** BI has demonstrated its effectiveness in supporting better regulatory policy design and delivery. However, the complex system of institutions and processes underlying policy making is run by people, who can experience the same biases and barriers as individuals. Reforms to these institutions and processes, such as creating a new oversight body or implementing regulatory management tools, can run headlong into behaviour change issues that ultimately limit their success. The next frontier is to take lessons from BI applied to policy and extend these to the internal workings of government to improve policy making from a system perspective.
- **The *delivery* stage of regulation is critical in this context, particularly through smarter enforcement and inspections, which are based on (and proportional) to risks, and focused on outcomes.** As again highlighted by the COVID-19 crisis, governments need to develop and implement risk-based, professional and flexible regulatory delivery across regulatory spheres and sectors, harnessing in particular the opportunities provided by digital technologies and improved availability and use of data to make such approaches both easier to introduce, and more effective.
- **Governments need to (re-)build trust in regulation and regulatory services,** through better communication strategies, shifting from public consultations to stakeholder engagement and demonstrating good governance of regulatory institutions.

Introduction

As ably demonstrated by the 2015 and 2018 OECD *Regulatory Policy Outlooks*, regulating in "normal times" already represented a significant challenge for countries. Throughout the last decade, we have witnessed a series of regulatory challenges, many stemming from the need to ensure an inclusive and sustainable recovery from the Great Recession (2007-09). In a number of instances, outright policy failure has resulted where regulatory policy processes had been rushed or completely ignored

Yet these almost pale into insignificance compared with the seemingly insurmountable challenges societies currently face and will likely face in the coming years. Against a backdrop of a once-in-a-century global health and economic crisis, hyper-partisanship, general distrust of decision makers, and the seemingly ever-quickening pace of technological change, regulatory policy has never been more crucial. The ability to provide clear, well-reasoned and evidence-based public policy will help to rebuild, refocus, and reform economies for decades to come, which ultimately supports more effective rulemaking and building the trust of citizens.

The necessary rebuilding of economies and society will challenge the very foundations of the social compact – something that has become increasingly strained in recent times. It will require changes to the regulations that underpin the market economy, to better balance economic efficiency with inclusiveness, resilience and sustainability goals. No doubt, these changes in regulatory approaches may meet some opposition. Yet demonstrating the need for change and highlighting that there are superior alternatives to the status quo are two of regulatory policy's core strengths.

Regulatory policy begins with a clear enunciation of a public policy problem. Unfortunately, recent history has given us many: climate change, inequalities from globalisation, ageing populations, and a seemingly inexorable spread of platform businesses. These trends will continue to challenge the way we work, live, and operate as a global society. To combat these problems, governments will inevitably need to intervene. Even with the best of intentions, policies can occasionally be rushed, poorly thought out, or rolled out without adequate prior consultation, which may eventually result in situations where governments do more harm than good. What is required is a process of engagement and evidence gathering to help make policies stronger and more robust.

This chapter details how regulatory policy itself is not immune from these challenges. It too will need to evolve and adapt. This chapter should attempt to set a scene for regulatory policy for the next decade, one that is more agile, better reflects changing environment and evolving government priorities but one which is still firmly set in the foundations described by the 1995 and 2012 OECD Recommendations – regulatory policy 2.0 if you will.

Why the reinvention of regulatory policy?

Regulatory measures have been essential at nearly every stage of resolving the COVID-19 crisis and dealing with its social and economic effects. In this context, governments still need to uphold the well-tested principles of regulatory policy and the rule of law. The use of regulatory discipline (as currently defined by the *2012 Recommendation of the Council on Regulatory Policy and Governance*) is key to the post-COVID recovery and, more generally, to the proper functioning of economies and societies. Despite governments' efforts, rule-making activities are still suffering from significant gaps; this is exacerbated by the fact that regulating itself has become increasingly difficult. Many citizens around the world are experiencing regulations that either fall short of their intended effects or outright fail to offer the protections they promise. A key concern is that inappropriate rules may lead to a loss of trust in institutions and even in government itself. Good regulation is instrumental to build confidence that decision makers are actually concerned with the betterment of society.

Three sets of issues best encapsulate the shortcomings and limitation of regulatory policy and its implementation. *First*, and as already stated in the previous instalments of the Outlook, a number of regulatory management tools are under-developed, insufficiently implemented or their implementation did not lead to the expected results. While some progress has been made as regards stakeholder engagement and regulatory impact assessment, there is significant room for improvement at the subsequent stages of the Regulatory Governance Cycle. One of the critical gaps stem from the very limited focus on *ex post* evaluation of laws and regulation partly due to the limited amount of resources and investments. Many regulations often remain on the statute books without ever being evaluated whether they are fit-for-purpose and achieve the goals for which they were adopted. While the *ex ante* assessment of newly developed regulations is becoming more common, it is much rarer that governments systematically review regulations after a certain period of time, besides *ad hoc* reviews mostly focusing on administrative/regulatory burden reduction.

A whole-of-government approach to regulatory delivery is still rather rare across much of the OECD. Common frameworks, processes, methodologies and data sharing amongst enforcement and inspection agencies would ensure more linked up approach to managing societal risks. Yet the structures, allocation of resources, methods and practices in regulatory delivery remain too often based on legacy/path dependency. Regulatory delivery is marked by overlaps and duplications of enforcement functions and gaps at the same time. Facing resource constraints, delivery suffers from inefficiencies in targeting inspections and enforcement activities, unequal implementation of effective risk-management and lack of focus on compliance promotion (see Chapter 6).

Similarly, only a limited number of countries have developed a cross-governmental vision of international regulatory co-operation (IRC), while domestic solutions are largely insufficient to tackle the global challenges faced by governments. These weaknesses undermine the quality of regulatory frameworks which, in turn, can result in ineffective policy intervention, failing to protect citizens. Appropriate IRC can help manage cross-border risks, promote work-sharing and pooling of resources across governments for effective regulatory responses, reduce costs of production and facilitate trade. IRC is therefore an important building block of structural regulatory reform to embed resilience in regulatory frameworks. This has been reaffirmed in the COVID-19 pandemic, during which momentum was high to ensure an effective approach to face the pandemic as well as its economic and social consequences, and the rationale for embedding international co-operation and impacts as fundamental pillars of regulation to address the crisis and its aftermaths and prevent future ones became undeniable.

Second, regulatory policy still remains underutilised by governments when compared with the efforts associated with tax and spending measures. Fiscal policies are usually developed in consultation with stakeholders; impacts and trade-offs are identified; and they are subject to significant scrutiny. Even though these are the hallmarks of regulatory policy, somehow, a disconnect has been allowed to permeate between fiscal and 'other' measures. Whilst it is understandable that fiscal policy measures attract a lot of interest, it does not follow that other things governments regulate are somehow of lesser importance. After all, these other laws have provided – and continue to provide – inalienable rights, the judicial system, a plethora of laws aimed at saving peoples' lives, and the protection of endangered flora and fauna, to name but a few. Given the importance of these other laws to everyday life, it is disappointing – and at worst dangerous – to continue to eschew the value that regulatory policy offers. Regulatory policy offers a robust yet flexible framework, combined with powerful tools, which help policy makers create better laws. Put simply: if it is worth regulating, it is worth regulating well.

Regulatory policy as an important lever besides monetary and fiscal policies is still not attracting the attention it deserves from governments. While achieving the Sustainable Development Goals, fighting climate change or tackling the population ageing issue have become the most important goals for many governments across the globe, regulatory policy is rarely mentioned during political declarations announcing government plans to achieve those objectives. This is surprising and in a way disappointing as regulatory policy offers a set of powerful tools that should help governments in their efforts to achieve the above-mentioned goals.

Third, failing to consider the behavioural drivers of human (in)action is another factor that limits the effectiveness of regulatory policy. One of the central goals of regulation is to change behaviour in some way. Understanding how social context and behavioural biases affect decision making can help policy makers understand the drivers of actions, ultimately helping to improve the effectiveness of a regulation. For this reason, policy makers around the world are turning to the field of behavioural insights (BI) to support better regulatory policy making.

More can still be done to leverage the power of BI. OECD research demonstrates that BI is mostly used to address issues of individual behaviour and often towards improving the implementation of non-behaviourally informed policy (OECD, 2019[1]). There is opportunity to use BI both throughout the policy-making cycle and to changing organisational behaviour, especially government itself. The system of regulatory governance can be strengthened by using BI to guide policy makers to the right regulatory tools and processes, as well as provide motivation for possible reforms. This would help ensure the best tools for solving a regulatory issue are considered at every stage of the policy-making process.

These challenges are not new and have been prominent for some time already. In addition, across the globe have to face new challenges connected to rapidly evolving, new trends or significant events such as the current COVID-19 pandemic.

Regulatory challenges raised by new trends or events

Challenges raised by technological transformation

During COVID-19, society's reliance on digital solutions has never been greater. Governments have harnessed digital technologies to support the public-health response to COVID-19 worldwide and secure the continuity of their operations and service delivery. These interventions include outbreak monitoring, case identification, contact tracing, evaluation of interventions and communication with the public. More important still, with the pandemic considerably accelerating and reinforcing prior trends, digital technologies have reshaped the way in which we work, keep in touch, go to school and shop for essentials goods. The deterministic influence of digital and emerging technologies on societies will only grow in the years to come (see Chapter 6).

In this context, governments face an increasingly daunting task in administering their responsibilities as regard technological transformations (Box 1.1). Governments will need to foster innovation and accommodate technology-driven disruption while upholding a level of protection for people, businesses and the public interest at large perceived as adequate. They will need to develop agile and future-proof regulatory approaches while at the same time balancing the need to provide stability and predictability for businesses. They will need to enable greater experimentation under regulatory supervision while also reforming regulation and rules to avoid the creation of uneven playing fields and stranding legacy assets.

Box 1.1. Transformative changes brought by technological developments

The industrial changes brought by technological transformations are unprecedented in view of their pace, scope and complexity. This "revolution" is made of parallel technological breakthroughs which have led to the development of new products, new services and new business models that were hardly imaginable even a few years ago. Recent technological advances span a wide range of areas, from digital technologies (e.g. artificial intelligence, blockchain or the internet of things), to biotechnologies (e.g. gene editing) and advanced materials (e.g. nanomaterials).

These technological developments will have far-reaching consequences for the well-being and cohesion of society as a whole, as well as deep impacts on businesses in all sectors through their effects on productivity, employment, skills, income distribution, trade and the environment.

Digitalisation, in particular, has proved a very powerful means to promote wider consumer choice, stronger competition and greater subjective well-being. It can also entail significant risks and adverse effects, including by significantly disrupting labour in traditional markets, marginalising fragile populations, promoting the dark economy and raising profound challenges as regard data protection, privacy or discrimination for example.

Against this background, regulation is essential to mitigate the risks of technological transformation while promoting useful innovation, experimentation and entrepreneurship. Yet, while pace of digitalisation and its impacts on society and markets have been widely addressed by the OECD and others, far less attention has been paid to the actual consequences for the rule-making activities of governments.

It is clear that sweeping technological advancements are creating a sea change in today's regulatory environment. The governance and regulatory challenges raised by innovation can be broken down into four main categories (OECD, 2019[2]):

- Difficulties to cope with the accelerated scaling of digital technologies;

- Erosion of the usual delineation of markets, challenging the scope of regulators' mandate and remits;
- Enforcement challenges;
- Fragmentation of regulatory frameworks across jurisdictions while most emerging technology generate strong cross-border effects.

Beyond these regulatory challenges, governments also face growing public and political pressure to develop new approaches to innovation, in order to avoid hindering the development of useful innovation while ensuring that the downside risks are effectively managed. There is, for example, an increasing expectation to change the way online platforms are regulated. These (belated) calls for regulation have triggered the emergence of many reform proposals and the introduction of new regulations. Unhelpfully, little attention has been given in turn on how regulatory practices should evolve. Yet, with the benefit of hindsight, it is clear that rushing into regulation and bypassing standard regulatory policy protocols is not an optimal strategy. It entails real risks of regulatory failure, including:

- Unnecessary barriers to the spread of innovations that serve the public interest (e.g. through unnecessarily opaque, incomplete, redundant or overlapping regulatory landscapes) ;
- Failures to mitigate the downside risks that innovation can entail.

The first type of regulatory failure can be difficult to detect but the resulting opportunity costs may loom large for economies and societies, in particular in a context of slow productivity growth. While the second type is often much easier to diagnose, a major concern is that its consequences might not be reversible in some cases (e.g. gene editing), entailing potentially severe societal damage.

Both failures highlight a strong need for governments to proactively engage with innovation and use regulatory policy as an effective tool to navigate the associated challenges and, ultimately, choose the right regulatory (or alternative) approach. The traditional regulatory policy tools provide important opportunities to consider, consult, question and test the approaches that may help achieve general policy objectives. They can support governments in choosing between regulatory and alternative approaches to promote digital innovation while mitigating the risks. Results of recent cases studies on technological transformation highlight that a variety of regulatory approaches have been implemented by governments (OECD, 2021, forthcoming[3]) These range from explicitly preventing the development and adoption of digital technologies, to adopting a "wait and see" approach to discover which perceived risks materialise, or piloting of innovative approaches such as the adoption of fixed-term regulatory exemptions (e.g. regulatory sandboxes) for innovative entrants that maintain overarching regulatory objectives, such as consumer protection.[1]

Regulatory policy tools are key to help governments identify strengths, weaknesses and needed adaptations of existing laws. While interesting regulatory practices are emerging across countries in this area (Box 1.2), more would need to be done to maximise the opportunities brought about by technological transformation and mitigate the risks of regulatory failure. As regards IRC in particular, much more can be done to co-ordinate government policies and develop effective regulatory action across borders. The regulatory divergences across jurisdictions are, to some extent at least, an illustration of the lack of regulatory co-operation. Such differences should not be downplayed, as they hold the potential to undermine the effectiveness of action, further undermine peoples' trust in governments and generate barriers to the spread of beneficial innovations. Similarly, the outcomes of a survey launched by the OECD shows a raising awareness among countries of the need to adapt RIA practices to deal with the concerns raised by technological transformation but few initiatives have been effectively launched so far.

Box 1.2. Regulatory management practices related to technological innovations: recent initiatives

International regulatory co-operation: responses to the transboundary challenges of technological transformation are emerging, notably through the development of an architecture of international and regional organisations and greater awareness at the domestic level of the limitations of unilateral action. As an example, Canada has enshrined a key principle of International Regulatory Cooperation in its Cabinet Directive on Regulation. In the financial sector, a number of initiatives have emerged, such as the co-operation between the Abu Dhabi Global Market (ADGM) and the ASEAN Financial Innovation Network on a regulatory sandbox initiative; the creation of the Global Financial Innovation Network (GFIN) to promote a global financial sandbox; and the significant number of 'Fintech bridges' implemented across the world (e.g. co-operation agreement between the United-Kingdom and Australia to foster co-operation between governments, financial regulators and businesses). On December 2020, seven governments (Canada, Denmark, Italy, Japan, Singapore, the United Arab Emirates and the United Kingdom) announced the creation of the Agile Nations, the world's first intergovernmental alliance aiming at fostering co-operation across borders towards more agile, flexible and resilient governance and regulatory practices to unlock the potential of innovation. The Agile Nations Charter[1] sets out each country's commitment to creating a regulatory environment in which new ideas can thrive. The agreement paves the way for these nations to co-operate in helping innovators navigate each country's rules, test new ideas with regulators and scale them across the seven markets;

"Whole-of-government" approach to rulemaking: some jurisdictions have developed a range of institutional mechanisms to tackle fragmentation, including in the United Kingdom with the Ministerial Group on Future Regulation and the Centre for Data Ethics and Innovation.

Stakeholder engagement: a number of jurisdictions have started putting a strong emphasis on stakeholder engagement to respond to the opportunities and challenges arising from digital technologies. The 2018 Digital Charter of the United Kingdom brought together the government, the tech sector, and businesses and civil society to collectively address the challenges of digitalisation and find solutions. This involves making it as easy as possible for citizens to give their views and harnessing the ingenuity of the tech sector, and to look to them for answers to specific technological challenges. Denmark has launched a set of key principles to follow during rulemaking, in particular at the impact assessment stage, which highlight the importance of supporting companies' ability to test, develop and apply new digital technologies and business models. Another interesting initiative has recently been launched by the UK Financial Conduct Authority. In 2019, it released a broad call for inputs to better understand the scale of interest and the potential of cross sector regulatory sandboxes. The objective is to allow business to test new products, services or ideas in a controlled environment with simultaneous oversight from multiple regulators working together.

1. https://www.gov.uk/government/publications/agile-nations-charter.

Benefits and potential pitfalls in using technology for regulation

Digital transformation offers major opportunities for governments to strengthen their regulatory capacity (see Chapter 6). The technological evolution can offer new innovative approaches to resource-constrained governments and regulators, and to support more effective and efficient rulemaking. For instance, Artificial Intelligence is increasingly being piloted to support reviews and consolidation of regulations, because of its ability to cover massive amounts of legislation and look for links between texts from different sectors, administrative levels, etc.[2] Increased capacity to gather, manage and analyse data also means that the

evidence base for the regulation-making process can be significantly broadened and strengthened. Risk analysis and risk assessment can be considerably improved at both strategic and operational levels. Technological change can also enable major improvements in regulatory delivery both in terms of improving the rapidity of responses and precision of targeting (data interconnection, Machine Learning etc.) – and to monitor complex, widespread, remote objects and phenomena. Real-time monitoring, e.g. through the use of remote sensors can also enable the effective implementation of performance-based regulation (e.g. in pollution control – see also Chapter 6, section on Outcomes-focused instead of process-focused regulation).

At the same time, new technologies can also present some potential pitfalls, e.g. when increased technological capacity and decreasing costs lead to the impression that, in a given areas, "total control" may be possible (through a combination of real-time, widespread monitoring, use of the Internet of Things, etc.). The question is not only whether this is *actually* feasible, but whether it is desirable. First, quite obviously, a massive extension of remote surveillance raises major concerns in terms of individual rights and freedoms, and the fact that technology makes the "surveillance state" easier to implement and more "effective" should make democratic governments all the more cautious about engaging too far in such approaches. Second, excessive reliance on increasing the regulatory reach through technology and automation presents serious problems even from the perspective of regulatory effectiveness, and even assuming that concerns about individual rights are set aside (for the sake of argument) or can be effectively addressed.

Indeed, while excessive reliance on remote surveillance can cause serious vulnerabilities, over-enthusiasm for a massive extension of control is also based on fundamentally flawed premises concerning both the "fitness-for-purpose" of remote controls, and their impact on compliance. On the former, it assumes that remote surveillance and data will be adequate, and reliable. In fact, a large number of risks, that regulation aims to address, are very difficult or impossible to control remotely (e.g. many food-safety risks relating to personal hygiene, handling, etc., cannot effectively be remotely monitored). Moreover, while undertaking to extend control as much as possible reflects a vision founded on distrust (i.e. it assumes that there is always a need to control more, i.e. that violations of rules are likely otherwise), the tools of remote control are themselves eminently vulnerable to fraud, hacking etc. In other words, if the extension of control is seen as necessary because of distrust in the actors of the current system (be it economic operators or state employees), then technology-enabled "extended control" is not a logical proposition, since the same possibilities of dissimulation and manipulation exist (or, arguably, are increased).

Thus, technology should not be seen as a substitute to sound regulatory design and delivery, but as a new instrument to implement good regulatory practices in an even more effective way.

Regulatory policy and COVID-19

The ongoing COVID-19 outbreak has placed governments worldwide under extreme pressure to put in place emergency regulations for containing the epidemic.[3] Responding to the epidemic has involved regulatory issues at nearly every stage. Regulation affects the availability of tools to identify and fight the disease (tests, products and devices) and impacts upon the ability of public utilities to maintain critical services, of food to be produced and delivered, of essential services to continue functioning. Beyond the immediate crisis response, regulatory issues also matter in enabling economic and social recovery, and to be better prepared for future crises. A selection of some of the government's COVID-19 response measures are set out in Box 1.3. Governments have been faced with a particularly challenging set of policy trade-offs as they develop these regulations, e.g. what kinds of restrictions should states be imposing on work, play and freedom of movement? When should they open up for business? How open should they be, exactly, and exactly when? (Sunstein, 2020[4]) The potential consequences of any regulatory (or non-

regulatory) decision are perhaps far more widespread than normal times, with significant economic and social impacts.

Box 1.3. Regulatory measures which governments have put in place in response to COVID-19

In the United Kingdom, the Government put in place emergency primary legislation (the Coronavirus Act) in March 2020, as well as 70 pieces of secondary legislation as well as a series of non-legislative changes. The legislative changes granted police, immigration officers and public health officials' new powers to detain potentially infectious persons and prohibit and restrict gatherings and public events for the purpose of curbing the spread of COVID-19. Regulations for public and health services were changed to allow streamlined approaches (such as to medical prescribing); and temporary relaxations of competition legislation in defined areas (such as ensuring better co-ordination of food supply) and relaxation of vehicle testing rules. The majority of the Act's provisions were intended to expire after two years, although the legislation allowed for this period to be extended by six months or shortened.

In France, the parliament adopted the Emergency Law to Address the COVID-19 Epidemic in March 2020 declaring a health emergency in the country to counter the spread of the coronavirus, a move that gave the Government greater powers to fight the spread of the disease. The text of the legislation enabled the French government to restrict people's freedom of movement and rule by decree to requisition certain goods and services, over a period of two months. The bill also empowered the Government to take special economic measures in support of French companies hardest hit by the virus outbreak. The emergency was originally planned to last for two months from the day of its adoption, although in May 2020, the parliament has since voted to extend the state of emergency until June 2021.

In Korea, no lockdown has yet to be imposed on any city or region. Instead, the government urged citizens to comply with distance measures and encouraged employees to work from home. On 22 March 2020, the authorities started a distancing campaign for four weeks (e.g. encouraging the population staying at home and avoiding mass congregations). Korea's containment strategy was based on testing, tracing and treatment. Testing has involved innovative methods such as drive-through and walk-through testing facilities, along with the rapid development of tests, allowed extensive testing. With respect to tracing, Korean authorities conducted rigorous epidemiological investigations in accordance with legal procedure, using credit card transactions, CCTV recordings and GPS data on mobile phones when necessary. With testing, patients are classified according to severity and directed towards appropriate treatment paths at hospitals for severe cases and living and treatment support centres for milder cases. Health care resources and organisation were adjusted in response to the pandemic.

Source: (OECD, 2020[5]); (Assembly, 2021[6]).

However, in a crisis where much of the evidence is incomplete, uncertain and information is evolving rapidly, it has been particularly challenging to anticipate, analyse and thoroughly discuss the impacts of regulations, let alone co-operate on or align policy approaches internationally to face a global crisis. The urgent need for governments to develop public health measures has consequently left little room for them to carry out comprehensive stakeholder consultations or consider alternative regulatory or non-regulatory options in the policy-making process. Furthermore, reliable data on the rates of infection and fatality are sorely lacking and existing policies may be getting in the way of gathering information that will be essential for developing sound policy responses (Dudley, 2020[7]). Moreover, securing the timely and unrestricted access to reliable data sources (e.g. as open data) has become a matter of digital solidarity in light of the global scale of the pandemic (OECD, 2020[5]). Urgency has limited the capacity for more deliberative forms

of policy making involving the use of regulatory management tools and practices, such as RIA and stakeholder engagement (see also Chapter 2).

This does not mean that emergency regulations should forgo some, although in some cases lighter, scrutiny of their impacts and effectiveness. A well-designed regulatory system can adhere to recommendations on regulatory policy and governance (in particular, the 2012 Recommendation), even in a crisis. Furthermore, once the immediate pressure from the crisis is over, regulations adopted through fast-track procedures can be subjected to careful *ex post*, or post-implementation reviews (PIR) in order to examine their impacts and effectiveness. Economic regulators can play an important role to support these efforts through their collection of data and their knowledge on sectors (see Chapter 5) It is also particularly important that governments possess robust and adequately resourced regulatory oversight bodies, which will play a crucial role in ensuring better regulation habits do not fall in priority following the crisis.

Looking ahead – a glance to the future of regulation

The COVID-19 pandemic has wrought economic and social disruption worldwide. As governments seek to rebuild afresh, they must ensure that the innovative policies that will power economic growth and solve the world's most pressing social and environmental challenges are not held back by regulations designed for the past. The various challenges faced by governments raise a strong need to develop pioneering and agile regulatory policies, harnessing*, inter alia*, the opportunities provided by digital technologies.

Leveraging and adapting regulatory management tools to increase agility, quality and coherence of the rulemaking system

Adapting regulatory management tools

Every regulation is inevitably an experiment. Some regulations deliver the desired benefits, some do not and need to be amended or repealed. Regulatory management tools such as RIA, stakeholder engagement and *ex post* reviews of the stock of regulations provide important opportunities to consider the whole portfolio of potential solutions, analyse their impact, consult with all stakeholders, monitor compliance with and evaluate performance of regulations. They have been playing the central role in the efforts to achieve regulatory outcomes since the very beginning and will remain a crucial part of regulatory policy in the future. However, these tools need to be adapted and their implementation must be improved to help governments navigate the challenges and the opportunities brought by transformative changes and choose the right regulatory (or non-regulatory) approaches in achieving government objectives.

According to the results of the previous iREG surveys, and confirmed by the one carried out in 2020, RIA is still in many countries carried out late in the regulation-making process, in many cases only used to justify the solution that has already been selected. This goes against the main purpose of RIA – a rigorous process that critically examines alternatives to a given policy problem, providing for inherent trade-offs and ultimately highlighting the option that will maximise the benefits for society while minimising costs. The process of impact assessment needs to go hand-in-hand with the process of developing a policy proposal and start at the inception of this process when identifying the problem to be solved and the objectives to be achieved (OECD, 2020[8]). How to achieve this, how to make RIA a firm part of the daily work of civil servants and policy-maker will be one of the main challenges for the upcoming years.

To identify the right option, officials need to take into account the whole portfolio of potential solutions, both regulatory and non-regulatory (OECD, 2020[8]). Administrations need to get rid of the "regulatory reflex" – opting for a regulatory solution wherever there seems to be an issue requiring a government intervention. Guidance and training on the use of alternatives to regulatory tools need to be improved, officials must be

motivated to examine alternative solutions wherever this might be beneficial and regulatory oversight bodies need to play a stronger role in promoting the use of such solutions. Using approaches such as outcome-oriented regulations, co-regulations, standard-setting or leaving space for self-regulation has to become more common in order to permit more flexibility in response to the fast-pace of technological changes. International experience and instruments need to be viewed more systematically as a fundamental pillar of domestic rulemaking. For this, learning governments' approaches to similar challenges in other jurisdictions or at the international level can be a valuable step in identifying the right regulatory or non-regulatory option.

One of the likely effects of the COVID-19 pandemic is that regulators might be operating in an environment with increased uncertainty in the future. The techniques such as problem definition or analysis of impacts might therefore need to be adjusted as well. When defining the problem to be solved, officials will have to take into account that various problems might have significantly different impacts on various groups of stakeholders (e.g. youth, elderly people, women, SMEs) or sectors of the economy (tourism, hospitality). In the phase of evaluating impacts, the uncertainties regarding potential effects of the adopted measures must be taken into account as well. RIA, envisaged as a tool to maximise the benefit/cost ratio, could also represent one tool helping select the solution that will lead to the desired effects and outcomes (OECD, 2020[9]).

Stakeholders might play a crucial role in identifying optimal solutions. Stakeholder consultation is not only about identifying optimal solutions, but also giving citizens the opportunity to weigh in on trade-offs and value preferences to help manoeuvre the new ethical and distributional challenges that arise from new technologies and technologically-driven business models. For this, it is important that stakeholders are systematically consulted and engaged in the regulation-making process from the early stages (see Further shift from public consultations to stakeholder engagement).

Furthermore, once the immediate pressure from the crisis is over, regulations adopted through fast-track procedures will have to be subjected to careful *ex post*, or post-implementation reviews (PIR) in order to examine their effectiveness. It will be necessary to adapt the *ex post* review processes to make sure that a significant backlog of regulations to be reviewed is avoided. This would involve prioritisation while making sure that measures adopted as temporary will not become permanent. The use of sunsetting clauses and expiry dates will probably become more frequent.

It is also particularly important that governments possess robust and adequately resourced regulatory oversight bodies, which will play a crucial role in ensuring that better regulation habits do not fall in priority in a time of crisis. They will potentially play an important role in extracting lessons learned and promoting the adoption of innovative approaches to regulatory management; as well as helping prioritise *ex post* review efforts and ensuring that relevant evidence from implementation is collected and assessed.

Increasing regulatory coherence, aligning regulatory governance with strategic governmental goals

Regulatory coherence refers to the use of good regulatory practices in the process of planning, designing, issuing, implementing, and reviewing regulatory measures in order to facilitate achievement of domestic policy objectives, and in efforts across governments to enhance regulatory co-operation in order to further those objectives and promote international trade and investment, economic growth and employment.

At the national level, regulatory management tools help to ensure that regulations are aligned with the overall political objectives expressed in government's manifestos, programme statements, coalition agreements, etc. RIA is a crucial tool in achieving regulatory coherence. For this, it is necessary that, in the phase of problem identification and especially defining the objectives of the government interventions, officials take into account the existing political environment and to what extent the examined alternative solutions fit into the more general objectives of the government. Some kind of "light RIA" might be carried

out already at the stage of defining government objectives to make sure that they are achievable and, in some cases, not a sub-optimal ways of dealing with a given problem. This aspect should then play an important role along with fitness-for purpose and cost-effective ratio in selecting the efficient solution.

The COVID-19 crisis has put in the spotlight the threats and harms to health and economy, but does not reduce the urgency of addressing environmental threats to global prosperity and well-being. The need to address the climate change and sustainability will thus remain once this crisis abates. As mentioned earlier, regulatory policy is rarely used to its full potential in achieving current priority goals for governments across the globe, such as the Sustainable Development Goals, fighting climate change, aging population or supporting inclusive growth. To change this, it is necessary to focus on tools that have potential in improving policy coherence and helping governments in achieving their goals as well as, drawing from the experience of the COVID-19 crisis for instance, ensure that business costs related to regulation are kept limited. This would include the ones of sustainable development, through optimisation of policy responses to the defined problems, be it social injustice or climate change.

Sound public policies grounded in evidence – and implemented effectively – will be crucial for the achievement of the 2030 Agenda. By fully reflecting SDGs in the regulatory framework, governments can enhance public sector's capacity to consistently formulate, implement, and monitor policies coherent with the 2030 Agenda for Sustainable Development across sectors. To this end, governments should make use of regulatory management tools at all stages of the regulatory policy cycle. While embedding SDG considerations at the *ex ante* impact assessment stage is crucial for the development of new legislation positively impacting SDG achievement, conducting retrospective reviews through an SDG lens is equally important to ensure the existing stock of legislation is in line with the goals of the 2030 Agenda. Engaging relevant stakeholders, like NGOs and research institutions, helps to ensure the latest scientific insights regarding SDGs are reflected in policy making.

Crises such as the COVID-19 pandemic require a coherent policy response. This, of course, includes introducing coherent regulatory measures. Such coherence must be achieved among various institutions at the central level of government, across different levels of administration, including between federal, state, regional and municipal levels of government but, nonetheless importantly, also at the international level through IRC (see Chapter 4).

Indeed, the inherently global consequences of the COVID-19 pandemic highlighted that no policy maker could act in isolation, that to be effective, domestic regulators and policy makers had much to learn from foreign authorities and to gain from joining up approaches. Governments therefore made important efforts to share knowledge and experience in designing the right policies in this context, to guarantee the resilience of global value chains especially in essential food or medical products, and to ensure the interoperability of services such as international travel or internet access. At the same time, the urgent needs for co-operation at the heights of the crisis highlighted the importance of embedding IRC systematically in regulatory frameworks to be able to mobilise in time for future emergencies, and to work together towards preventing future crisis (see Chapter 4).

Again, regulatory oversight bodies need to play a more proactive role in assessing whether the quality of draft regulations are coherent with government objectives (see Chapter 3).

Removing regulatory "sludge" and "deadwood" for better recovery

Setting up clear and predictable administrative procedures is important to achieve regulatory objectives. At the same time, procedures can be an important source of administrative burdens (or regulatory "sludge"[4]) which might be difficult to justify in the times when setting up and operating a bank account might be done remotely without even visiting the bank. Governments should over time review their administrative procedures and, to the extent possible, try to streamline them to make it easier to comply with the obligations set by these procedures. In many countries, the COVID-19 pandemic forced governments to speed up digitalisation of government services.

To make it easier for regulated subjects to comply with administrative procedures, governments should create one-stop shops (OECD, 2020[10]) through which it will be possible to deal with most of the government services, if possible using remote access and ensure the application of the once-only principle (asking for information only once and sharing it between administrative services), aiming at reducing the administrative burden on citizen and businesses. Also, excessive reporting might not be necessary whenever data might be collected, processed and shared among government institutions using modern technologies (OECD, 2019[11]).

The COVID-19 pandemic contributed to the digital transformation of government operations in many aspects. What seemed to be – or was claimed to be – impossible had to be done in a matter of months or even weeks. Public communication and service provision between governments on one side and businesses, citizens and organisations on the other revealed in some cases unjustified complexity of certain administrative procedures but also surfaced the value of "Government as a Platform" ecosystems to help identify user needs and develop new services in response to crises. It has also proven that digital transformation and digital government efforts must in the future go hand-in-hand with the revision of administrative procedures and design of services with a view to their simplification and reduction of unnecessary administrative burdens as government becomes more proactive and user-driven.

In a post-COVID world, it will also be necessary to restart economies that were partially put on standby during lockdown periods. The recovery programmes should include systemic reviews of regulations, especially those affecting businesses. Even during the crisis, governments waived hundreds of regulations and administrative procedures. Governments have, for example lifted rules against restaurant deliveries and all sorts of permit regulations that were preventing people from working while under lockdown. A more systemic review of unnecessarily burdensome regulations should be put on the agenda of all administrations which want their businesses to flourish again and see new ones created (ref to forthcoming Working Paper on competitiveness impacts of regulation). Special regimes for SMEs and/or better analysis of impacts on small and microenterprises and considering exemptions for those companies should also form part of the recovery strategy.[5] The new technologies, possibilities in collecting and processing large volumes of data, might make this process more structured and evidence-based. It is however, necessary that administrations clearly define the data they will need for monitoring and reviewing regulations already at the stage of development of regulations.

Thinking differently: Adopting behaviourally-informed approaches to regulatory governance

The future of regulation also requires governments to take a step back and think critically at how regulations are made. Over the last decade, practitioners and policy makers applying behavioural insights (BI) to regulatory policy making have demonstrated it success as a tool for supporting new approaches to policy making (i.e. (Lunn, 2014[12]); (OECD, 2017[13]) and (OECD, 2019[1])). While applied mostly to individuals, often in consumer choice situations, the BI approach has worked alongside other innovative approaches to discover policy solutions not usually considered in the traditional approaches to policy making.

As part of its evolution, BI practitioners and policy makers have been expanding its use to new frontiers in an effort to both mainstream the practice and support better outcomes for the whole of society. For regulatory policy, this has included a shift from individuals to organisations – where the interaction between regulators and regulated entities influence outcomes (OECD, 2020[14]). This research has demonstrated that organisations can be influenced by behaviourally-informed approaches.

Building off this success, a key element of this forward-looking agenda is investigating how BI can improve the effectiveness and efficiency of system of regulatory policy making – or "regulatory governance". This follows from the OECD (2012[15]) *Recommendation*, which develops a governance framework for regulatory policy making that seeks to deliver ongoing improvements to regulatory quality. This framework elaborates a system of institutions, processes and tools that, when functioning properly, help support better

regulatory decision making. If BI has worked to improve regulatory decisions, i.e. the outcomes of policy making, then what impact can it have on the institutions, processes and tools that create these policies? The OECD (2021, forthcoming[16]) has produced a working paper examining this question, and its key findings are presented below.

Why we need to consider behaviours in regulatory governance

Behaviour change is one of the goals of regulation. This can be achieved through trying to promote a certain action (i.e. purchasing healthier food) or outcomes (i.e. a healthier society) or dissuade others (i.e. limiting the rise in health care costs). To achieve this goal, regulatory policies are traditionally derived from highly generalised and powerful deductive models of human behaviour and decision-making (Lunn, 2014[12]). These models often rely on a number of assumptions of human behaviour, such as the "rational actor" model for economic regulation. Policy makers often then use these assumptions of humans' decision-making to build policy responses.

However, the field of BI has demonstrated that social context and behavioural biases systematically influence people's abilities to act in predictable ways (OECD, 2019[1]). BI offers a clear methodology for policy makers to analyse policy problems based on lessons derived from the behavioural and social sciences, collecting evidence of which solutions work (and which do not), and applying these findings to improving the outcomes of public policy. These applications have largely been towards changing individual behaviour, often at the implementation stage of policy making to improve non-behaviourally informed policies. New research is exploring BI applied to changing the behaviour of organisations, including both regulators inside government and regulated entities in the market (OECD, 2019[17]); (OECD, 2020[14]).

A new paradigm is emerging called "behavioural public choice" (Lucas and Tasić, 2015[18]); (Viscusi and Gayer, 2015[19]) that raises normative arguments in favour of applying BI to the institutions, processes and tools that form the framework of regulatory governance. The roots for this theory can be found as far back as Niskanen (1971[20]), noting biases in bureaucratic processes, and more recent political economy arguments, such as public choice, that present evidence behind government failures based on failures to rationalise (i.e. (Tullock, Seldon and Lo Brady, 2002[21]), as cited in (Viscusi and Gayer, 2015[19])). What behavioural public choice theory adds is a model whereby psychological biases can be used to analyse government failures and offer different solutions in response.

The core argument for behavioural public choice theory is the realisation that governments are increasingly using behavioural sciences to intervene via policy decisions, while not taking into account that policy makers and regulatory themselves are subject to the same biases and barriers as any other individual (Viscusi and Gayer, 2015[19]). This ultimately impacts the efficiency and effectiveness of institutions, processes and tools. In fact, governments tend to "institutionalise rather than overcome behavioural anomalies" (Viscusi and Gayer, 2015, p. 40[19]), including failures in risk perception and risk assessment that can lead to an over application of the precautionary principles leading to excessive regulation or a failure to realise that regulation is needed at all.

For example, cost-benefit analyses treat losses and gains equally. However, a well-founded axiom of behavioural science is that humans weigh losses more heavily than equivalent gains (Kahneman and Tversky, 1979[22]), which can lead to more risk-adverse behaviour. As Viscusi and Gayer (Viscusi and Gayer, 2015[19]) note, if for instance, the Hippocratic Oath for doctors is "first, do not harm" then this will set the tone for medical regulators to more emphasis on losses than gains, which may prevent some drugs from being approved. In other cases, regulatory agencies may develop "tunnel vision" that result in policy makers sticking with certain processes and tools, resulting in inconsistent and inefficient outcomes.

In short, the inability of individuals within government to rationalise because of behavioural factors is an important source of government failure (Lucas and Tasić, 2015[18]). The behavioural public choice perspective is therefore a call to symmetrically apply behavioural insights to both the regulators and the regulated entities (Thomas, 2019[23]). In other words, since government is created and run by humans, who

experience the same biases and barriers as anyone else, there is good reason to look at the ways behavioural science can help government run more effectively.

This suggests a couple different implications for policy making. First, decisions by regulators are, at least some of the time, systematically biased and this can result in sub-optimal policy decisions. Second, more than just biased decision making, it suggests that there are behavioural barriers that prevent regulators from using effectively the tools and processes of regulatory policy making to support better regulatory policy outcomes, such as intention-action gaps or other friction costs. Thus, regulators and the regulatory process can benefit from identifying and reducing behavioural biases and barriers, and supporting follow-through on good intentions. This paradigm gives new entry points for BI to help support better regulatory policy making that moves beyond implementation towards supporting the broader governance of public organisations through change and reform management.

Using BI to support the use of regulatory management tools

Behavioural public choice has important implications for the use of regulatory management tools in promoting better regulation. OECD (2021, forthcoming[16]) research suggests several new approaches to identifying behavioural biases and barriers that affect use of regulatory impact assessment, stakeholder engagement and *ex post* evaluation, as well as proposes possible behaviourally-informed solutions to overcome them. These can be summarised into four categories, based on OECD (2019[1]):

1. Attention: Help regulators focus on using regulatory management tools effectively. This includes reducing cognitive limitations and myopia through the smart use of reminders and defaults.
2. Belief: Support regulators in updating their belief about the utility of the tools, and therefore their motivation to use them. Implementation intentions can help bridge intention-action gaps, as well as leveraging loss aversion by highlighting the risk of not using the tools.
3. Choice: Assist regulator's choice about specific ways to use the tools by addressing problems of group think and status quo bias through diversified work teams and deliberation structures that encourage debate.
4. Determination: Encourage regulators to continue using these tools over time by addressing barriers such as perverse social norms and perceived lack of autonomy in decision making. Demonstrating improvement and changes to the tool over time can provide structure while enhancing autonomy.

The above list is non-exhaustive and derived from discussions with the regulatory policy making community in an attempt to place focus on important areas that have been highlighted as pertinent to the use of regulatory management tools. They provide a good starting point for research into practical ways to use BI to improved use of these tools.

More broadly, there is also opportunity to use the BI methodology itself to improve the analysis conducted as part of regulatory management tools. The point of these tools is to gather and use information to better inform regulatory decision making. The BI methodology is a complementary tool that similarly seeks to gather evidence, but does so through an experimental approach. This seeks to "de-bias" the evidence collection, analysis and decision-making process by providing evidence of actual – as opposed to assumed – human behaviour, and use that evidence to make policy.

It can also help uncover "behavioural failures" (Viscusi and Gayer, 2015[19]) that depart from the individual rationality assumed in economic models and can provide additional justification for intervention in certain cases (Congdon, Kling and Mullainathan, 2011[24]). This allows policy makers to consider behaviourally-informed solutions alongside the traditional policy responses in a way that augments and elevates the decision by opening the door to other regulatory and non-regulatory options. The may be especially powerful in the context of *ex post* review, which can permit more time to conduct robust experimental evaluations of potential behavioural issues that can ultimately drive new design cycles.

Growing importance of regulatory oversight

As mentioned above, the role of regulatory oversight bodies (ROB) will probably become more important in the future. As evidence shows (Ladegaard, P., P. Lundkvist and J. Kamkhaji, 2018[25]), a well-functioning oversight is a *sine qua non* condition for effective implementation of regulatory policies. ROBs will have to play a more active role in co-ordinating implementation of regulatory management tools, acting as advocates of regulatory policy, gatekeepers overseeing quality of regulations and the use of regulatory management tools in their development, implementation and review. More and more, ROBs have also have to offer their helping hand to ministers and other agencies supposed to use regulatory management tools in their work.

Promoting such change can be tough for many people to handle, and changing the behaviour of large organisations such as bureaucracies can be even harder. However, there is evidence which suggests that understanding the behavioural drivers of change management can help make implementing such reforms easier and more effective. The previous section discussed this with regards to regulatory management tools, but it can also apply to how oversight is conducted.

Behavioural public choice also provide ways to improve regulatory oversight. OECD (2021, forthcoming[16]) finds five aspects of ROB's roles and structure that may enhance the importance of behavioural insights. These include the tendency of organisational path dependency, different levels of public scrutiny, the location of the ROB relative to government decision making, the role of ROBs as both generalists and specialists, and pressures they face being "in between" public servants and decision makers.

Better focus on regulatory delivery for achieving regulatory outcomes

The use of the term "regulatory delivery" is not only descriptive but also stresses a paradigm shift that views the relationship between regulatory delivery institutions and regulated entities differently from traditional regulatory implementation focused on more "sanctions-oriented" inspections and enforcement (Russell Graham and Hodges Christopher, 2019[26]). It seeks to cover the whole spectrum and wide range of activities and actions, measures, processes used to secure the implementation of regulations in practice.

This shift has been occurring over the last two decades with major restructuring and consolidation of inspection services in a number of countries, including Estonia, Lithuania, the Netherlands, Slovenia and the UK. This trend has continued, with a number of institutional reforms aiming at ensuring better regulatory outcomes and increased efficiency (see Chapter 6).

This situation, combined with other research on specific countries, regulatory areas, etc., suggests that path dependency is important, and that there is a lack of regular, systematic reconsideration of the risks addressed by regulatory delivery structures and resources (Blanc, 2012[27]) (Blanc, 2018[28]). This has contributed to extremely complex, convoluted institutional landscapes (as directly observed when collecting the data, the difficulty of which came precisely from the vast number of institutions with overlapping or mixed functions, frequent unavailability of precise numbers on inspecting staff, etc.), and made resource allocation and expenditure very difficult to track and assess, and mostly unrelated to risk analysis or assessment. From this perspective, the path towards truly risk-based, risk-focused, and risk-proportional regulatory delivery is still a very long one. Nonetheless, important progress has been made, and major initiatives taken in recent years to improve the situation, which are detailed in the following section of this chapter.

One such example is that of the Environmental Evaluation and Enforcement Agency of Peru (OEFA), which was recently the subject of the first OECD assessment based on the criteria laid down in the 2018 OECD Regulatory Enforcement and Inspections Toolkit (OECD, 2018[29]).

In practice, this has meant a new focus on a broad spectrum of relevant tools, activities and actions, as well as it stressing a more supportive relationship building approach. It highlights an active role of state institutions in informing and guiding regulated subjects, to support them to understand the rules that apply to them, what they mean and intent to achieve and why, and how they should/can be implemented. The default assumption is no longer that non-compliance is deliberate, but rather that it is highly likely to result from lack of knowledge, incomprehension, wrong interpretation, or technical and/or financial incapability to comply with rules – and the state has a crucial role (and a duty) to play in helping regulated subjects comply and manage and mitigate risks to the public welfare (Blanc, 2021[30]).

A fundamental basis for building a regulatory delivery approach to implementation is to consider the behavioural drivers of (non-)compliance. It is premised on understanding why people behave in a certain manner – and what can work in a specific case. This is based on extensive research[6] which shows that regulated subjects do not act exactly as prescribed by rules, nor are driven merely by interest and fear. Also, compliance does not automatically result in regulatory goals being achieved, because rules are not optimally designed (see Box 1.5).

Rather, compliance and risk-mitigating behaviour is actually constrained by four key groups of behavioural drivers that state agencies must effectively use to deliver regulation (Blanc, 2018[28]):

- Capacity, i.e. knowledge, financial and technical ability;
- Deterrence, i.e. fear of negative reputation and sanctions;
- Individual moral values and dominant social and cultural drivers; and,
- Legitimacy of authorities, and perceived procedural fairness.

Of those four, increasing the perceived procedural fairness is essential to boost voluntary compliance as it greatly contributes to building trust in the regulatory system and the legitimacy of regulators. The concept of procedural fairness is built upon four key tenants (Tyler, 2003[31]):

1. Ensuring that regulatory officers behave in a thoroughly respectful way;
2. Giving a “voice” to regulated individuals/entities to explain their circumstances, issues, challenges, expectations etc., as well as demonstrating that these are taken into account as much as possible;
3. At all stages, explaining to regulated individuals/entities what the rules and processes are, what is the goal of the regulation, how they are being applied etc.; and,
4. Consistently demonstrating that rules and procedures exist to avoid conflicts of interest on the regulator’s side, and that best efforts are made to effectively avoid such conflicts.

Using the tenets of procedural fairness increases the professionalism and technical competence of the regulatory delivery institution, promotes an approach that is based on proportionality and risk, and seeks interaction with regulated entities that promotes and strengthens trust while using sanctions as a last resort (see Box 1.4).

Box 1.4. Improving compliance and risk management with procedural fairness in practice

The Netherlands’ Inspectorate for Health and Youth Care (IGJ) has placed an important focus on consulting stakeholders and uses their input in its work. For instance, the IGJ monitors how hospitals learn from sentinel events, with the idea that it should lead to social and participative learning at the local level (de Kam et al., 2020[32]). The IGJ also conducted systematic research on patients and family involvement, showing advantages (increased quality of regulation, increased legitimacy, perceived justice for those affected, and empowerment) but also challenges (how to incorporate the input of users

in decisions, the fact that not all users want to be involved, time and costs required, organisational procedures standing in the way etc.) (Wiig et al., 2020[33]).

In recent years, many initiatives tried to make regulation more accessible and understandable, particularly for small businesses in the food industry. For instance, since 2017 the Veneto Region in Italy has developed a series of detailed manuals for small, local producers, particularly in "traditional" food specialties. The Canadian Food Inspection Agency supports food businesses in understanding and applying the 2019 *Safe Food for Canadians Regulations* through a comprehensive Toolkit for businesses, which takes them through all aspects of the regulations, both in terms of substantive requirements and of processes. Such tools, by explaining the rules, their rationale, and how they are applied, not only improve knowledge – but also willingness to comply, through a perception of increased fairness.

Source: OECD research.

Ethical business regulation

A related approach, Ethical Business Regulation (EBR), is becoming an increasingly popular way of achieving better regulatory delivery principles. EBR is a behaviourally-focused tool that seeks to use flexible, outcomes-oriented approaches to delivering regulations. The idea underpinning EBR is that "regulating with rules" is bound to always under-perform, since the primary driver of behaviour inside corporations is not rules or deterrence through enforcement but rather culture (Hodges, 2015[34]). EBR does not exclude the use of rules and sanctions, particularly for businesses and individuals that behave clearly unethically, but acknowledges that rules and deterrence are bound to achieve disappointing results if they are seen as the primary instrument to reach regulatory objectives.

From an EBR perspective, regulators assess the internal culture of firms, and engage in a co-operative approach if this culture is fundamentally sound and conducive to achieving the goals of regulation. This creates positive incentives for firms that are "on the edge" to change their culture, and the regulator's role is to provide guidance on how to do so. For firms that refuse to follow an ethical path, the regulator reverts to strict enforcement of rules and sanctions. In a sense, EBR reformulates a flexible and responsive approach that has long been used by a number of regulators, but in a more coherent and "culture-focused" framework (see Box 1.5).

Box 1.5. Ethical business regulation

An ethical and fair culture, whether within an organisation or in a regulatory enforcement regime, has to distinguish between people who are essentially trying to do the right thing and those who are not. It is important that enforcement responses are fair and proportionate. Part of this is ensuring that the responsibility is attributed to the highest relevant level of management within an organisation, rather than the foot soldier who may be a victim of the system or of wilfully blind or 'immoral' management. Thus, if people engage in activity that is criminal, people expect to see the law upheld and for there to be a proportionate response. But where people have been trying to do the right thing, or have been generally, but not wilfully, ignorant about how to do things, adopting a punitive response would be seen as unfair, and hence would undermine general willingness to comply.

The culture should involve accountability to share all relevant information on a no-blame basis, so that the data on which performance, improvement and innovation can be based will be maximised. If a no-blame culture is to be effective, it must exist across all relevant aspects, including employment relationships, systemic regulation, professional regulation, and business units.

Source: C. Hodges, Ethical Business Regulation: Understanding the Evidence, report to the UK Better Regulation Delivery Office, 2016, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/497539/16-113-ethical-business-regulation.pdf.

Finally, ongoing research by the OECD Secretariat on regulatory delivery institution shows that path dependency is still largely the predominant force that shapes regulatory delivery structures, institutional mandates, resources etc. There has, to date, been relatively few experiments of systematically reviewing and revising these, re-assessing existing structures and resources against current risks and their respective salience. Identifying duplications and conflicts of competence, as well as mapping all resources involved in a given regulatory field, can be important steps towards further improvements in regulatory delivery (see Chapter 6 for more details).

The need for risk-based, professional, flexible regulatory delivery

One of the challenges to both the development of new technologies and the effective regulation of new, technologically-enabled or technologically-transformed economic activities, is the over-reliance on excessively prescriptive and detailed rules. The impossibility of achieving an "optimal" precision of rules has been convincingly demonstrated decades ago, and the unavoidable distance between rules, compliance and results has likewise long been known (Diver, 1983[35]); (Baldwin, 1990[36]); (Ogus, 1994[37]); (Baldwin, 1990[36]). What this means in practice is that rules, because the full extent and characteristics of all possible situations can never be predicted in advance, will always be either "over-prescriptive" (forbid or mandate too much, ruling out some activities that would actually be desirable) or "under-prescriptive" (fail to forbid some harmful activities). This impossibility of "optimal" rules means that risk-based, accountable, professionally-grounded discretion at the regulatory delivery and enforcement stage is unavoidable if one is to achieve the desired regulatory objectives (Box 1.6 and (Wetenschappelijke Raad voor het Regeringsbeleid, 2013[38])[7]).

Box 1.6. The impossibility of optimal rules

Regulations are not self-executing, and there are no such things as optimal rules (Stokes, 2010[39]). This fact, which has been emphasised by scientific research (started in 1983 by Diver who stressed first "the dissatisfaction with the precision of administrative rules, because of either administrative under precision or excessive regulatory rigidity") and in international experience, presents a number of challenges when it comes to regulatory delivery (Diver, 1983[35]). While norms are key for regulatory delivery work, all types of mandatory norms ("target", "performance" or "specification") have limits – those easier to check and enforce tend to also be least directly connected to the anticipated outcomes, and the purely "outcomes-based" ones are least connected to economic operators' actions, which makes them more difficult to enforce (Ogus, 1994[37]).

"Target" norms, in the first place, make unlawful the origins of certain harms. In theory, they impose the least burden on the economic operators and are more appealing in terms of economic efficiency and innovation, while allow also for greatest flexibility. However, they do not indicate how businesses should perform their activities, nor do they address intermediary outcomes. This creates difficulties, inter alia by making causal relationships between specific economic activities and the harms addressed by the

norms difficult to prove, and by creating uncertainty on determining what performance will constitute compliance.

"Performance" norms prescribe what should be direct outcomes of economic activities. As they focus on intermediate outcomes, they do not prescribe the specifics of the operations. While they ensure better certainty to economic operators, they also leave sizeable room for technological innovation, and flexibility. Yet, they can somewhat fail in preventing or mitigating harms as they do not focus on the final harms that the norms aim at lessening.

Finally, "specification" norms specify how an economic activity should be performed. While they are easier to handle both for regulatory delivery agencies and for small businesses they structurally lead to "errors of inclusiveness", which "discourage desirable activity (through over-inclusiveness) or […] fail to rule out undesirable activity (through under-inclusiveness)" (Baldwin, 1995[40]); (Diver, 1983[35]). High technological rigidity, the possibility to measure compliance only through on-site controls and high potential discrepancy between compliance and achievement of targeted outcomes are among their disadvantages.

It is thus crucial not to consider rules in isolation, but with their enforcement process. This involves matters of "form, force and type of sanction" as well as how the problems of inclusiveness may be dealt over the process of achieving compliance (Baldwin, 1995[40]). Use of (framed) discretion and selective and responsive enforcement by regulatory delivery agencies are therefore crucial to effectively prevent risks, as is considering which enforcement tools and methods will be used.[1]

1. In practice, even very specific and precise norms end up not working uniformly in practice because of differences in enforcement methods – e.g. whether an agency applies a "zero tolerance" or a "risk-proportionate" approach: (Blanc, 2018[28]).
Source: (Blanc, 2021[30]).

Applied specifically to the challenges raised by technological transformation, the impossibility of optimal rules means that may either completely fail to prepare for the new challenges and risks created or increased by these technologies, or on the contrary prohibit a range of new activities and products that could in fact be desirable – or, quite possibly, both at the same time. This is particularly visible in the case of administrative procedures, such as permitting and licensing rules. The emergence of "ride-hailing" apps led to the question of whether they were allowed under applicable rules governing taxis and drivers-for-hire, and how they could or should (or not) apply for a permit, based on existing requirements and processes. Rather, good regulation in such a case would mean asking what the risks from such activities can be, how they can best be addressed, whether the current processes are fit-for-purpose, and what should be changed in order to ensure the best possible public welfare outcomes given a new situation.

Risk-based regulation (see Chapter 6) means analysing risks to understand their roots and mechanisms, assessing the levels of different risks, and managing risks through a variety of measures. This, in turn, means using the risk angle both when developing an drafting rules, when allocating resources to different institutions or sectors, when determining licensing requirements or targeting inspection visits, or when applying sanctions. Risk is a cross-cutting notion that should be used as the foundation of the regulatory system. Moving away from an approach that is tightly focused on the letter of the rules, and attempts to constantly reduce margins of discretion of regulatory staff is necessary to avoid such pitfalls, where regulation leaves society worse off through a combination of barriers to innovation and ineffective management of risks (see Chapter 6). Regulations address a number of different potential harms (bodily, environmental, financial etc.), not all of which are of equal seriousness – in particular, reversibility or its absence creates a key difference. Likewise, regulation addresses many hazards – industrial pollution and explosions, food poisoning, building fires and collapses, marketing fraud, tax evasion etc. Again, not all of these are of the same severity, and the likelihood of each of these actually happening varies greatly. Thus,

comparing the level of priority of regulating different, but also different economic sectors or establishments, based on the harm caused, is inherently difficult.

Risk can allow to consider allocation of resources at a strategic level (between different domains such as environmental protection, food safety, state revenue, technical safety etc.), even though this is rarely done – as well as to prioritise regulatory interventions in a given domain, between different economic sectors and establishments, which is a much more frequent practice. In this way, risk can function as a kind of common measurement unit, allowing easy conversion and comparison of the relative "value" of different regulatory interventions in terms of lives saved, environmental impact, economic impact etc. – but this is only possible if a common approach to risk assessment across regulatory domains and sectors exists.

Comparing the relative levels of risk, and deciding on the appropriate type and intensity of regulatory response, requires having gone through risk assessment – i.e. estimating the relative level of different risks in terms of combined probability and severity of harm. To allow full comparison across different regulatory domains, not only should there be a unified approach for risk assessment – but also a method to convert different types of harm. While this is theoretically possible (there exist many approaches in law and economics to estimate the economic value of life, health, the environment etc.), it is rarely done in practice with that level of precision. Most often, comparisons of risk levels are done within a given category of harm – e.g. potential losses of life, or potential financial losses. In any case, regardless of the level and scope to which risk is applied, it is an instrument of comparison, and thus prioritisation.

Finally, while risk prioritisation done solely by sector or type of activity can be a useful first step of improvement in situations where risk assessment is starting "from scratch" and with limited or no data to support the exercise, it is not optimal, and insufficient in the longer run. In advanced economies, and where data needed for risk analysis and prioritisation are available to regulatory delivery authorities, a more differentiated approach to risk assessment and targeting can be expected – e.g. so as to be applied to each business entity or object (facility, establishment) individually, based on inherent characteristics and track record.

Why risk matters: the importance of prioritisation, and proportionality

This should not mean, of course, that regulators and regulatory staff are vested with arbitrary powers, and that economic operators and citizens do not have appropriate protections. The use of discretion should aim at a responsive, compliance-promoting approach, and be grounded in principles of risk-proportionality, accountability and transparency (OECD, 2014[41]) (OECD, 2018[29]) (OECD, 2018[29]). Only if decision-making principles and criteria are clearly communicated can discretion be exercised in a way that safeguards rights and the rule of law.

One way to move forward is to support regulated citizens and business as the bearers of risk in managing the risks they face. This involves working in partnership with all stakeholders able to produce sustained change. Inspectors in Britain's Health and Safety Executive have long relied on an approach where law is the last resort and they seek to engage with regulated businesses and promote safer practices through a variety of behavioural approaches (i.e. advice, comparisons with others, indication of potential risks and costs, etc.) (Hawkins, 2003[42]). Results show better outcomes (in terms e.g. of fatal and major accidents) than before the change of approach and/or in other sectors not using this new approach to the same extent.[8]

Harnessing innovation for regulatory delivery

The "delivery" stage of regulation is critical, particularly through smarter enforcement and inspections, which are based on risks and focused on outcomes. As exposed, designing "optimal" rules has always been impossible, and is even more so in a context of rapid change, increasingly complex economic networks etc. – and technology does not change this fundamental point. "Regulation as Code" is a new

name, and uses new technology (and increasing computing power), but corresponds to a restrictive view of rules and regulations, which might lead to consider regulatory discretion as an imperfection to be eliminated, and be seen as a way to achieve perfectly predictable and unambiguous rules. In fact, it might not always be feasible nor desirable to have fully "explicit" or "unambiguous" rules, as exposed above (Box 1.6). In many cases some of the ambiguities in existing legislation result from unavoidable political compromises or from the willingness to leave some form of flexibility and discretion to deal with uncertainty (which is inherent when dealing with events and situations which, by definition, have not taken place yet). In addition, transposing or transforming a significant share of rules into code would imply a fundamental shift in regulatory governance, enforcement, and legal proceedings –which, in turn, raises critical questions around the democratic legitimacy to implement and interpret rules outside of clearly determine executive and judicial powers. Outside of narrow, specific cases where this may be suitable (e.g. specific aspects of tax or customs law, of financial regulation, or of eligibility rules for subsidies), such an approach is bound to yield sub-optimal (or even poor) results. Rather, harnessing technological advances to improve regulatory delivery recognises prior good practice, and tries to implement it more broadly and effectively through new technology.

Growing evidence suggests that governments are increasingly incorporating new technologies in a number of ways (see Chapter6, section on Highlights: major initiatives and innovations in risk-based regulation). This involves, in particular, better collection, management, and use of data, so as to assess and respond to risks more effectively, as well as improved use of communication tools. Being a smarter government requires a more forward-thinking approach to the use and integration of information, technology, and innovation in the activities of governing and delivering services (see Box 1.7). Digitising regulatory delivery also raises a number of risks and barriers that should be effectively addressed by governments.

Box 1.7. Digitising regulatory delivery

Many governments have started considering new (digital) technologies to improve enforcement and inspections activities. The increased availability of data on the outcomes arising from different policy interventions that were previously imperfectly observable enables improved monitoring and supervision (e.g. real time and continuous monitoring of compliance), and more effective enforcement of policies. Examples of online licensing and registration of businesses, automated scheduling of inspections, use of drones for surveillance activities, application of machine learning and AI for risk analysis and compliance education are emerging from different jurisdictions around the world. New technologies enable smarter regulatory oversight activities such as risk-based targeting by providing information and knowledge that would allow for proactive actions and response. As such, they can assist regulators in allocating resources efficiently and obtaining results that demonstrate meaningful outcomes. They can also help regulated parties demonstrate compliance thus lowering costs of regulatory burden on businesses.

Examples of such approaches include the use of satellite imagery to monitor environmental compliance (e.g. in Chile), integrated information systems for management of regulatory inspections (Colombia at municipal level, Italy at regional level, HSE in Britain, Serbia, etc.), use of social media data to identify sources of outbreaks and target inspections (local authorities in the US), remote inspections for chemical safety (Finland), remote mining and energy supervision (Peru), integrated data management for environmental regulation (Ireland), etc. Some regulators (e.g. NVWA in the Netherlands) are also looking at using satellite and drone imagery in the future for supervision of primary production in some sectors (e.g. fisheries).

Another area where regulatory delivery needs to become more "digital" is, logically, the regulation of online marketplaces. In recent years, regulators have increasingly engaged with major platforms to achieve better results by relying on the platforms' own digital tools e.g. in the Netherlands, with the NVWA working with Ebay "Marktplaats". Germany's food regulators have made particular efforts to work effectively with online commerce (see *G@ZIELT: Safe shopping on the internet*, a joint Federal and *Länder* initiative for control of internet trade in products covered by the Food and Feed Code and tobacco products: https://www.bvl.bund.de/en/remit/gezielt_safe_shopping/gezielt_node.html).

Source: (OECD, 2021[43]) and (Mangalam, 2020[44]).

Need for a shift to allow more dynamic, flexible and technology-neutral approaches to laws and regulation in the face of innovation

As a key policy instrument, regulation offers important opportunities for governments to capitalise on the benefits while mitigating the risks brought by technological transformation. As highlighted above, regulating has become a daunting task in the current environment. Technological innovations fundamentally question the rationale for traditional regulatory approaches and calls for adapted and innovative solutions to solve the transversal challenges to the design, enforcement and governance of regulation. In most cases, the transformative changes brought by innovations have not yet been mirrored by corollary innovations in governance and regulation. Yet, in the face of the challenges brought by technological transformation, governments need to undertake substantial reforms in order to allow more dynamic, flexible and technology-neutral approaches to laws and regulations and their enforcement. This involves several complementary approaches.

In line with the upcoming OECD Recommendation on Agile Regulatory Governance to Harness Innovation, governments should, in particular:

- **Develop more flexible, iterative and adaptive *ex ante* and *ex post* assessments**, capitalising on the opportunities provided by digital technologies to improve the quality of evidence: given the dynamics of digital transformation, regulatory responses cannot afford to be static and need periodic adaptations to keep pace with the transformative changes. Continuous monitoring of the stock of regulations could help governments assess whether regulation remains fit for purpose, effective and deliver the policy objectives and undertake regulatory revisions when necessary;
- **Foster coherence and joined-up approaches** through effective co-ordination between the supra national, the national and sub-national levels of government to cope with the cross-cutting nature of innovation;

  Develop forward-looking governance frameworks and regulatory approaches to help identify opportunities and risks at an early stage and to steer, under the conditions of trust, the sustainable deployment of technology;
- **Extend the traditional regulatory toolbox** by incorporating more agile regulatory approaches such as outcome-based regulations, fixed-term regulatory exemptions (e.g. regulatory sandboxes), co-regulation and non-regulatory approaches such as voluntary codes or standards. As highlighted by the OECD Global Conference on Governance Innovation,[9] governments and regulators are increasingly considering innovative approaches to support testing and trialing new technologies and capitalising on new technologies (e.g. big data analytics, AI, the Internet of Things, cloud computing, augmented reality, unmanned aerial vehicles, blockchain and open Application Programming Interfaces) to improve the design and delivery of laws and regulations. Approaches that have recently drawn the attention of governments include outcome-focused regulations, innovation offices or regulatory sandboxes (Box 1.8).

- **Develop new enforcement strategies to promote compliance:** governments should privilege responsive and compliance-promoting approaches to regulatory delivery that are focused on outcomes and based on risk-proportionality rather than focusing primarily on the letter of the rules.
- **Use digital technologies to develop innovative approaches** that allow for more effective and efficient rulemaking, compliance monitoring and enforcement (e.g. data-driven regulation). As an example, digital technologies can also be leveraged to implement continuous government monitoring of transformative changes and develop adaptive regulations that keep pace with the dynamics of technological transformation. As illustrated by the various technological solutions implemented across countries to improve regulatory capacity during the COVID-19 crisis, digital technologies offer new approaches to governments and regulators for more effective and efficient rulemaking under increased uncertainty (Amaral, Vranic and Lal Das, 2020[45]). In turn, a more agile and refined mix of regulatory and other instruments can help better frame the diffusion of new technologies, to benefit from their opportunities while addressing the concerns they raise in society.

Box 1.8. Some innovative approaches implemented (or contemplated) by governments

- **Regulatory sandboxes**: pioneered by the UK's Financial Conduct Authority (FCA), regulatory sandboxes generally refers to a regulatory "safe space" for businesses, enabling them to test innovations with reduced regulatory requirements. As relaxing regulatory requirements can potentially raise additional risks, most regulatory sandboxes operate in a controlled environment which include a number of safeguards. After a defined time period, innovators may apply for an authorisation outside the regulatory sandbox. This regulatory approach has emerged in a range of sectors including finance but also in the transport and the energy sectors.
- **Outcome-based regulations**: performance or outcome-based regulation usually defines measurable outcomes that regulated firms must achieve. In focusing on outcomes rather than on inputs, it offers flexibility to businesses on how to meet to objectives, as long as they can demonstrate that the desired outcome has been achieved. Such approach theoretically allows regulated entities to choose the most efficient way to achieve the regulatory goal, while lowering compliance costs. Despite the broad enthusiasm outcome-based regimes have recently garnered across countries, it must be underlined that they are certainly not a panacea in all cases. Recent failures (e.g. regulation of diesel engine emissions which led to the Volkswagen scandal) show that it can work poorly, especially when performance cannot be adequately defined, measured, or monitored.
- **Innovation offices**: several jurisdictions have implemented innovation offices to promote the development of innovation, in particular in financial services. An example is the Estonian Financial Supervision Authority (EFSA), which offers guidance on existing regulatory frameworks to innovators. While, in practice, innovation offices come in many different forms, a common objective is to strengthen the engagement with innovators and develop mutual learning. It offers avenues to anticipate risks and opportunities early on and address them through collaborative processes with businesses.

Note: for the Volkswagen scandal see (Coglianese, 2017[46]). For further information on innovative approaches implemented by governments, see (OECD, 2021[47]).

(Re-)building trust in regulation and regulatory services

Better communication strategies

One of the key causes of risk-aversion, and of losses of trust in the regulatory system, is disappointment related to excessive expectations. All citizens, consumers, media etc. expect too much of regulation and of the regulatory system. To avoid losses of trust and legitimacy, regulators (and their political supervisors) need to be honest and transparent about the limits of regulation: no regulation or regulatory system can entirely avoid risk, regulators are not all-powerful; safety lies primarily with business operators and consumers, and there are trade-offs between more regulatory stringency and other elements of public welfare (Coglianese, 2012[48]). The solution to this problem is the adoption of comprehensive risk communication strategies, which provide the essential links between risk analysis, risk management and the public. A coherent risk communication strategy may be ensured through the development of a risk analysis process, combined with open dialogue amongst all interested parties, (i.e. actively informing the public about the desired objective while disclosing the associated risks in a transparent fashion). To communicate risk effectively, there is a need to understand the target audiences and the challenges they are likely to face in assessing the risk and acting on it. In the current complex communication environment with a multitude of platforms, communicating risk in a controlled and co-ordinated way may of course be a challenge. This is why it is essential for regulators to steer regulated subjects and the public more generally around various issues that exist to find credible sources of information.[10]

In addition, regulators tend to assume that citizens have no appetite for acknowledging the existence of risks, and therefore often opt for statements that are principally intended to be reassuring, while supposing that the public is risk averse. Recent research has however shown that citizens are a great deal more relaxed about risks than often supposed, whereas the public is often rightly sceptical when risks are played down.[11] Regulators should communicate risk, e.g. by organising all sorts of public consultation that are also designed to provide citizens the opportunity to influence the decision-making process, and to prevent excessive disappointment (some of which may unavoidably happen). Citizens' participation in the regulatory process, and ensuring that they have a good understanding of risks, could prove decisive in setting their expectations, and, subsequently, to avoiding any overreactions – as overreactions are mostly due to a lack of information from, as well as insufficient honesty and transparency of regulators about the limits of regulation. However, even in this case, merely disseminating information without communicating the complexities and uncertainties of risk may be insufficient to ensure effective risk communication.

Box 1.9. The importance of public communication for public trust in regulatory institutions

Given the rise of the number of regulatory agencies and their increasing powers, it is imperative that they are perceived as trustworthy by the public – this not only applies to stakeholder trust, but also to citizen trust. For instance, trust in regulatory agencies is needed for the uptake of their recommendations by citizens and, as a result, regulated entities may feel more pressure to be compliant. Hence, citizen trust in regulatory agencies is crucial to sustain the effectiveness of regulatory agencies that, to a large extent, depend on voluntary compliance by regulated entities. Research carried out on different inspectorates (Health and Youth Care, Education, and Financial Markets) in The Netherlands explores different ways to inform citizens about regulatory, and more specifically, enforcement decisions and their effects on their trust. A survey experiment in a representative sample of the Dutch population of 18 years and older was used to investigate whether decision transparency influenced citizen trust in regulatory agencies.

Overall, the findings of the research suggest that transparency about regulatory decisions can increase citizen trust in a regulatory agency, supporting the Transparency Hypothesis which suggests that the psychological distance may be an important psychological mechanism behind the effect of transparency. At the same time, this effect was found less significant in the case of the financial regulator, which indicates that its magnitude is moderated by characteristics that are specific to the regulatory domain.

The results indicate that something in the nature of a regulatory domain may affect the overall influence of decision transparency on citizen trust. For instance, citizens may be less patient with agencies that supervise private markets, such as financial services, than agencies that supervise a public domain, such as public schools. Another way of thinking about the difference found between the financial regulator and the two inspectorates is their relative distance to ordinary citizens. The nature of the financial regulator's decisions is less related to the day-to-day problems of ordinary citizens than, for instance, the health and education inspectorate. These inspectorates are more in touch with citizen subjects, such as parents and patients, whereas regulatory agencies like the financial regulator are more in contact with professional stakeholders instead of ordinary citizens. Hence, being more aware of the financial regulator's decision might be less relevant for citizens.

More broadly, an important implication of this finding is that transparency may be more effective as a trust generating mechanism for organisations that are placed at arm's length from direct government and political control, such as regulatory agencies. Generally, people do not like political decision-making and being exposed to politicised decision making and bargaining decreases trust. Conversely, transparency in less-politicised organisations could have a relatively positive effect on trust and could even generate trust for some controversial decisions.

Source: excerpts from (Grimmelikhuijsen et al., 2019[49]).

Further shift from public consultations to stakeholder engagement

Stakeholders have a right to express their views as part of the process of developing, implementing, and reviewing regulations (OECD, 2017[50]). Their desire and willingness to influence regulation-making will probably grow in the future. At the same time, to get the best available input and to make the stakeholder engagement process inclusive, it will become more and more important for governments to play a more active role in reaching out and engaging with groups of stakeholders that may have been underrepresented so far, whether it concerns ethnic or sexual minorities, underprivileged groups, or micro-businesses (for more OECD work on Open Government, see http://www.oecd.org/gov/open-government/ and, in particular, the Recommendation of the Council on Open Government[12]).

To make sure that stakeholders provide meaningful input to the regulation-making process, policy makers need to engage with them regularly and sufficiently early. Regular engagement with stakeholders, be it businesses, NGOs, representatives of certain groups of the society (e.g. youth), etc. is indispensable for creating an environment of mutual trust. Providing complete feedback from the consultation process, i.e. how stakeholders' input is reflected in the regulation or, if not, providing tangible reasons for why it is not the case. Discussion fora where views on the quality and performance of the regulatory framework are regularly exchanged help administrations to understand the needs of the regulated subjects but also to explain the purpose of existing or new regulations. In some cases, these fora provide not just an opportunity for stakeholders to "complain" about the quality of regulations and regulatory burdens but also to jointly look for solutions (see for example European Medicine's Agency iSPOC system) or, if necessary, for administrations to explain why certain solutions cannot be accepted. This helps support mutual understanding of what the government is trying to achieve through regulations and potentially increase

trust of stakeholders in government regulations and therefore increase compliance with regulatory measures and achieving regulatory outcomes.

Administrations need to be aware of who will be affected by regulations and how. Any groups of stakeholders which might be disproportionately affected should be identified and also consulted with. Preferably, stakeholders should be mapped already at the inception of the process, before the regulations are being drafted. It is the government's responsibility to give all stakeholder groups an equal opportunity to express their views. This might mean actively reaching out to those who might not have the necessary resources for getting engaged or might not be sufficiently informed on the opportunities to be consulted.

Demonstrating good governance of regulatory institutions

To fulfil their functions, regulatory institutions 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. The governance arrangements of regulatory institutions are critical to the delivery of their functions and their performance as well as to (re-)gaining trust of citizens and businesses. The issue of the governance of regulators is thoroughly discussed in Chapter 5.

The fundamental importance of ethics

Rules have inherently limited power to exert change, and seeking to make regulatory systems ever more precise and rigid, and enforcement ever stronger, is no guarantee of positive results in achieving intended outcomes. Flexibility and agility are essential to avoid excessive burden and barriers to activity and innovation, and avoid bureaucratic defensiveness and situations where the unwavering implementation of rules can lead to absurd situation, and harm trust and legitimacy. Just as the implementation of rules needs to be underpinned by transparent criteria (in particular grounded on risk, see Chapter 6) and by strong professional ethics in regulatory bodies – supporting ethical approaches *within business operators* is likewise essential, and goes beyond the enforcement of formal compliance (Hodges, 2018[51]).

Notes

[1] It is worth underlining that given the sheer pace and the cross-cutting nature of technological changes, it is likely that the appropriate response will require a mix of regulatory approaches. As an example, self-regulation might well go hand in hand with co-regulation or guidance to provide some framework to business and mitigate the potential risks raised by the technology. Self-regulation can even be mandated by regulators through a regulatory measure. Similarly, it could be useful to combine regulatory sandboxes with regulatory guidance to reduce the level of uncertainty faced by business when launching a technological innovation.

[2] See on the use of AI for legal research and review and cf. the ongoing Government of Canada pilot on regulatory review using AI https://www.csps-efpc.gc.ca/video/ai-eng.aspx.

[3] See the OECD Briefing Paper "Regulatory quality and COVID-19: The use of regulatory management tools in a time of crisis" for more detail on how governments have responded to the crisis (OECD, 2020[9]). In addition, thousands of these COVID-19 measures have been described in detail by the OECD Policy Tracker: https://www.oecd.org/coronavirus/country-policy-tracker/#Containmentmeasures.

[4] Regulatory sludge: "excessive or unjustified frictions, such as paperwork burdens, that cost time or money; that may make life difficult to navigate; that may be frustrating, stigmatising, or humiliating; and that might end up depriving people of access to important goods, opportunities, and services." (see Sunstein, Cass R. (2019), Sludge Audits, 27 April). Harvard Public Law Working Paper No. 19-21, Forthcoming, Behavioural Public Policy, http://dx.doi.org/10.2139/ssrn.3379367.

[5] https://www.oecd-ilibrary.org/governance/how-do-laws-and-regulations-affect-competitiveness_7c11f5d5-en.

[6] See e.g. (Tyler, 1990[54]) (Tyler, 2003[31]); (Kirchler, Hoelzl and Wahl, 2008[53]) (Kirchler, 2006[52]); (Blanc, 2018[28]).

[7] A report by the Scientific Council to the Government of the Netherlands prepared in the aftermath of the global financial crisis and considering how excessively "rigid" rules had failed to prevent harmful activities and products.

[8] See for example Health and Safety Executive (HSE) (2016), *The effectiveness of HSE's regulatory approach: The construction example* (Prepared by Frontline Consultants for the Health and Safety Executive in 2013).

[9] see http://www.oecd.org/fr/gov/politique-reglementaire/oecd-global-conference-on-governance-innovation.htm.

[10] See also https://www.hsph.harvard.edu/ecpe/effective-risk-communication-strategies/.

[11] See the Summary Analysis of the Risk-Regulation Reflex, http://www.oecd.org/gov/regulatory-policy/48654345.pdf.

[12] https://www.oecd.org/gov/Recommendation-Open-Government-Approved-Council-141217.pdf.

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2 Evidence-based policy making and stakeholder engagement

Rules can be significantly improved when those impacted are involved. It allows for alternatives to be found, assumptions to be tested, and helps to build trust in government action. The *2012 OECD Recommendation on Regulatory Policy and Governance* recognises the importance of consulting broadly, ensuring that all relevant impacts are assessed, and that rules are periodically reviewed and open to legal challenge. The *Recommendation* also calls on governments of various levels to work together to achieve public goals. This chapter critically examines recent trends and progress made by OECD member countries and the European Union in attaining these agreed standards. Recent results from the globally unique Indicators of Regulatory Policy and Governance suggest that progress in reforming the way rules are made has stalled in a number of countries. Against a once-in-a-century global pandemic, there has never been a more important time to ensure that the work of governments actually improves citizens' lives.

Key findings

- **The development of laws would benefit from a more integrated approach to stakeholder engagement.** Only a few countries consult systematically at an earlier stage of policy development, to define policy problems and consider potential solutions. Most OECD members consult with stakeholders once a draft regulatory proposal exists. A limited number of countries consult when reviewing existing regulations.
- **Stakeholders can help improve policies if they are better informed about upcoming consultations and evaluations.** Around two-thirds of OECD members publish a list of primary laws that they plan to prepare or modify; while close to half do so for subordinate regulations. Around a third of OECD members inform the public in advance about at least some of their forthcoming consultations. It is uncommon that stakeholders are informed in advance about planned evaluations for existing regulations.
- **Citizens are more likely to view regulations as fair if they are engaged in the process and the outcomes of consultations are clearly explained.** While a majority of OECD members publish the comments they receive or a summary thereof, only in a third of countries is there a requirement for policy makers to systematically publish a *response* to comments received. Only a minority of countries are required to consider consultation comments when developing final regulations.
- **Policies could be improved by considering the full suite of alternative policy options.** OECD members generally identify and assess the impacts emanating from the preferred regulatory option. However there is a need to comprehensively consider a broader range of alternative options – especially non-regulatory ones – when developing proposals.
- **OECD members are increasingly proportionate in their depth of analysis.** An increasing number of OECD members require policy proposals to be proportionate to the significance of their impacts. The most common method to assess the depth of the analysis is to use a combination of both qualitative and quantitative thresholds to determine whether a regulatory proposal warrants more in-depth analysis.
- **OECD members now consider a broader range of impacts, but competitiveness impacts remain incomplete.** More countries require proposals to assess impacts on a range of social factors, especially on poverty, gender equality, and the environment. Whilst the consideration of economic factors dominates (such as competition, the budget and SMEs), these are often undertaken disjointedly and in individual silos. As a result, second-order effects such as the way regulations may impact SMEs' ability to access innovation or their capacity to enter international markets may not always be captured, and the analysis may underestimate the true cost of regulatory intervention.
- **The growth in availability and use of exceptions to conducting impact assessments is a significant concern.** The number of OECD members with exceptions to conduct impact assessments when regulations are introduced in response to an emergency has increased since 2017. The consequence of using such mechanisms is opaque as the exception decisions are not scrutinised or published. Their increasing use has not been complemented by an increase in the requirement to undertake post-implementation reviews where *ex ante* impact assessment was not undertaken. Governments could consider how impact assessment can be employed in a more flexible manner for genuine emergencies in the future, including "fast track" or "light" procedures to ensure that impacts are at least summarily discussed.

- **Despite the fact that potential gains from "stock" reforms are large, OECD members lag behind when it comes to *ex post* evaluations.** Some minor improvements have been made with more members beginning to formally require *ex post* evaluations to be undertaken, and a few countries have introduced innovative ways of embedding *ex post* evaluations into the regulatory lifecycle. However, overall many OECD members are still lacking in many areas of *ex post* evaluations – with very slow progress since 2014.
- **Regulations passed in response to the COVID-19 pandemic represent a future "wave" of *ex post* evaluations.** A significant number of regulations passed as a result of the COVID-19 pandemic have a requirement for periodic review. This presents an opportunity to assess whether such regulations have had their intended effects and whether there are better alternatives available, especially in situations where *ex ante* impact assessment was limited or completely absent. The future pipeline of *ex post* evaluations will need careful planning and consideration by entities undertaking and overseeing such evaluations, to ensure that they take place and are conducted at an appropriate point in time. The findings from such evaluations could prove useful in helping to mitigate the impacts of the next crisis.
- **The public can generally challenge the legality of existing regulations and individual regulatory decisions.** In two-thirds of OECD members, citizens and businesses have a least one mechanism to challenge existing regulations and the most common mechanism reported is judicial challenge. All OECD members have avenues for the public to challenge individual regulatory decisions before a body different to the one that made it. However, less than a third of countries reported having a standard period within which parties can expect a decision to be made.
- **Practices by OECD countries to promote regulatory coherence across levels of government and to foster the development and performance of regulatory management capacity in sub-national governments are not widespread yet.** Two-thirds of the surveyed countries have established practices that advocate for a consistent regulatory system, this includes all eight federal-type governments and eighteen countries with a unitary type system. This suggests that the rest of countries have the opportunity to implement systems to engage with sub-national governments to enhance the quality of the regulatory framework, regardless of the status of a unitary-type jurisdiction.

Introduction

Regulations, and the process of making them, are expected to reflect the needs and reality of society, but they also ought to adapt and react quickly to changes. This adaptation is more likely when the systems and practices for creating and improving regulations are fully embedded into the country's decision-making processes, rather than viewed as a bureaucratic afterthought.

This chapter provides an overview of the trends and progress of OECD countries in the implementation of the *2012 OECD Recommendation of the Council on Regulatory Policy and Governance*, with a particular focus on the use of regulatory management tools, particularly stakeholder engagement, regulatory impact assessment (RIA) and *ex post* evaluation of regulations. Sound regulatory management practices help to create an environment that fosters better regulations, which in turn can improve economic performance. In particular, this entails consideration of whether to regulate and of alternative options; assessment of regulations before their drafting; enactment or modification; evaluation of existing regulations to make sure that they are reaching the objectives for which they were created – especially when they are developed without a previous assessment, like in times of crisis –; and the constant involvement of stakeholders throughout these processes.

The chapter further describes how countries provide their citizens with mechanisms to challenge existing regulations. The right to challenge laws is a central democratic right of citizens. Avenues to challenge regulations should be available on both their creation and their legitimacy.

The chapter also summarises the arrangements put in place by jurisdictions to seek regulatory coherence across all levels of governments, and to promote and implement regulatory management practices at the subnational level. Lower levels of governments may establish additional layers of regulation, and/or can be responsible for implementing regulations issued at the national level. Hence, regulatory policies and tools should also be adopted by regional and local governments, and mechanisms should exist to aim for a frictionless regulatory framework across levels of governments.

The implementation of the remaining principles in the *Recommendation* related to oversight and performance evaluation, international regulatory co-operation, governance of regulators and risk are discussed in-depth in the subsequent chapters of the Outlook.

Most of the analysis of any trends and improvements is based on the results from the 2021 OECD Indicators of Regulatory Policy and Governance (iREG) survey, which covers 38 OECD members and the European Union. The survey was first conducted in 2014, then in 2017, and now for a third time in 2020-21. This allows for comparative analysis of the adoption and implementation of better regulatory practices not only across different countries, but also over time. Composite indicators summarising key information on stakeholder engagement and the use of evidence in the development and revision of regulations will be prepared (Box 2.1).

Box 2.1. Construction of the iREG Composite Indicator

The three composite indicators provide an overview of countries' procedures and 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 publicly available evaluations.
- Transparency records information which relates to the principles of open government, e.g. whether government decisions are made publicly 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, 2017 and 2020 Regulatory Indicators Survey, which gathers information from all 38 OECD members and the European Union as of 31 December 2014, 31 December 2017 and 1 January 2021 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*. 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[2]).

Overarching trends

The *OECD 2012 Recommendation of the Council on Regulatory Policy and Governance* (OECD, 2012[1]) (Recommendation) advises governments on the effective use of regulation to achieve better social, environmental and economic outcomes. It provides practical measures to assess countries' capacities to develop, implement, and review quality regulations in 12 principles.

No country has fully implemented the Recommendation. Findings from the Indicators of Regulatory Policy and Governance suggest that the current pace of implementation is too slow. Projections based on the survey results indicate that countries which are at the bottom of implementation would need more than 30 years to catch up to more advanced countries. Even those more advanced have a long way to go to fully implement the Recommendation. All countries therefore need to increase the speed of reform and invest more in solid regulatory policy to ensure their regulations are evidence-based and work in practice.

On average, countries have made small improvements in the adoption of regulatory management tools since 2017, with larger changes in *ex post* evaluation than for RIA and stakeholder engagement. This is unsurprising as *ex post* evaluation remains the least developed regulatory management tool overall, leaving it with the largest potential scope for reform.

It is worth noting that despite the overall slow pace of change, some countries have made more substantive changes in their regulatory management practices overall since 2017.

- Chile has made important improvements to its regulatory management tools over the last years. In 2019, Chile adopted Presidential Instructive No. 3/2019, which broadens the requirement to conduct RIA, making it mandatory for all primary laws initiated by the executive and for all subordinate regulations. There is now a threshold for conducting RIAs, which will determine whether a standard or high impact RIA should be conducted. RIAs are now required to consider alternative non-regulatory options and a range of specific impacts. Public consultations are now required for major regulatory proposals for which a high impact RIA is to be conducted.
- Greece has introduced Law 4622 in 2019, which further embeds regulatory management tools into the rule making process for primary laws. A list of laws to be prepared or modified is now published in advance. The guidance on regulatory impact assessment (RIA) for primary laws has been updated and now includes guidelines on how to conduct stakeholder engagement. Additional categories of regulatory costs shall be quantified, and regulators shall assess the regulatory impacts on a larger range of factors, including gender equality. Draft primary laws are now frequently posted on the consultation portal.

- Latvia's recent reforms cover all three regulatory management tools. Public consultations are now systematically conducted at a late-stage of policy development; written guidance is now available to assist officials on the preparation of RIA; and regulatory stock reviews are required for some subordinate regulations.
- SMEs in the Netherlands are now engaged in the early stages of the development of a regulation as part of an SME Test. New guidelines have been issued on the impacts on borders regions, gender equality and developing countries and the Sustainable Development Goals. The regulatory oversight body is now responsible for reviewing the quality of *ex post* evaluations of regulations, and has developed a toolbox with guidance for officials conducting policy evaluations.
- The Government of Portugal has recently undertaken a range of key reforms to implement and strengthen regulatory impact assessments. Regulatory alternatives as well as an increasingly broad range of impacts are now required to be analysed, and the scrutiny of quality of RIA for subordinate regulations has been reinforced. A new central consultation platform has been introduced for subordinate regulations, which is only used for late-stage consultation when there is a regulatory draft.
- Spain has strengthened its RIAs through the creation of a dedicated body. The Regulatory Coordination and Quality Office is in charge of promoting the quality, co-ordination and coherence of regulatory management tools. The transparency of the consultation process is improving with a new centralised platform lists all ongoing consultations. The platform also provides access to the annual regulatory planning agenda.

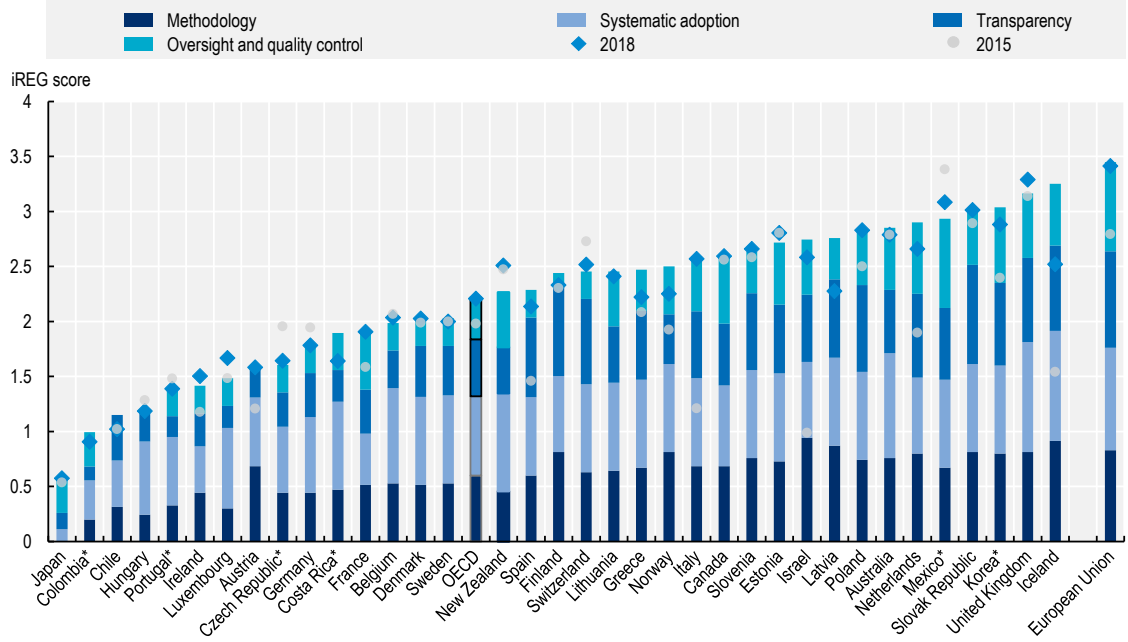
Regulatory management tools remain mostly focused on laws initiated by the executive. In the majority of OECD members, there is no requirement to conduct neither consultation with the general public nor RIA to inform the development of primary laws initiated by parliament. This is not necessarily a problem in instances where the executive is responsible for initiating the vast majority of laws, but that is not the case for all OECD members. Differences in law-making procedures mean that initiating laws through parliaments could be considered as a route that bypasses regulatory requirements. The OECD has previously suggested that parliaments should be encouraged to set up their own procedures to guarantee the quality of legislation, such as consultation, RIA, and *ex post* evaluation (OECD, 2015[3]). Despite this, the number of OECD members with requirements for laws initiated by the parliament has changed little since 2014.

Stakeholder engagement

Composite indicators and summary results

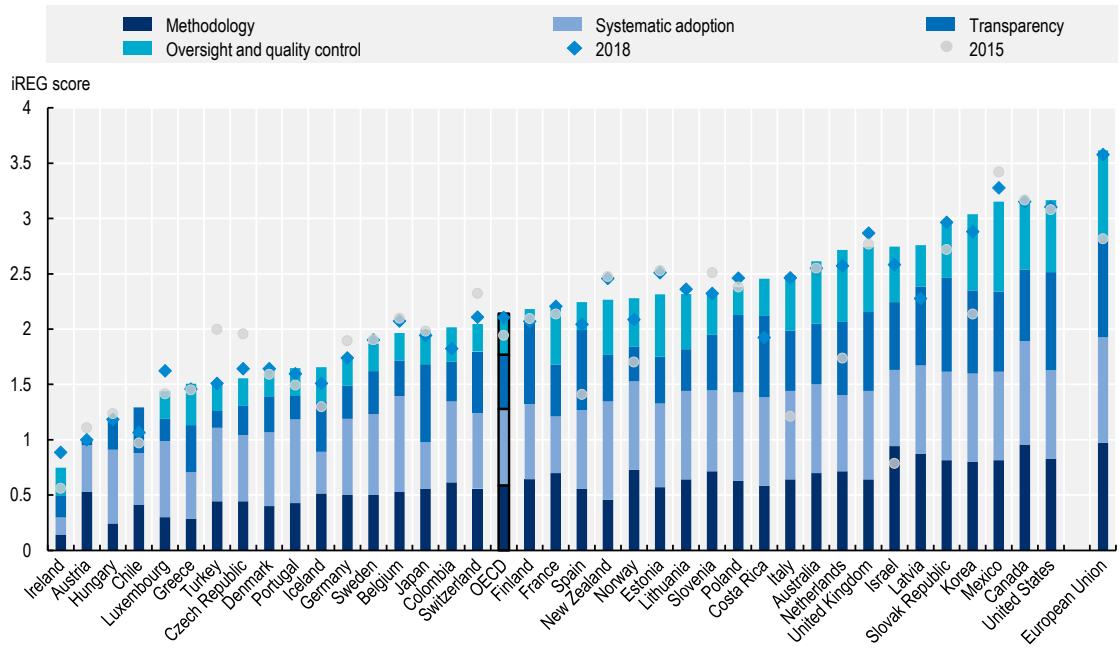
Countries improved their stakeholder engagement practices with respect to subordinate regulations to a greater extent than primary laws. Systematic adoption improved through new requirements to conduct stakeholder engagement, and through conducting late stage consultation more frequently. Improvements in the oversight and quality control of stakeholder engagement, by having oversight bodies in charge of promoting and scrutinising consultations, account for the improvement. For primary laws, there have been very slight improvements on the methodology of stakeholder engagement, which can be explained by the increased use of virtual meetings for consultations, and different documents being made available during consultations.

Figure 2.1. Composite indicators: Stakeholder engagement in developing primary laws, 2021



Notes: Data for 2014 are based on the 34 countries that were OECD members in 2014 and the European Union. Data for 2017 and 2021 include 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 Colombia, Costa Rica, Czech Republic, Korea, Mexico, and Portugal, where a higher share of primary laws are initiated by the legislature. Due to a change in the political system during the survey period affecting the processes for developing laws, composite indicators for Turkey are not available for stakeholder engagement in developing regulations and RIA for primary laws.
Source: Indicators of Regulatory Policy and Governance Surveys 2014, 2017 and 2021.

Figure 2.2. Composite indicators: Stakeholder engagement in developing subordinate regulations, 2021



Notes: Data for 2014 are based on the 34 countries that were OECD members in 2014 and the European Union. Data for 2017 and 2021 include 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, 2017 and 2021.

Countries that undertook substantive changes since 2017 include Chile, Colombia, Costa Rica, Greece, Iceland, Latvia, the Netherlands, Norway and Spain.

- In Chile, following a new decree, public consultation is now required for the development of subordinate regulations for which a high impact RIA is to be conducted. Some ministries now publish annually a list of regulations that they plan to review, consolidate, modify or enact, providing the opportunity for the public to provide comments and feedbacks on the plans. A central website links to open consultations and reform plans of each ministry.
- Colombia developed SUCOP, a digital platform that aims at centralising stakeholder engagement practices across all government entities. At the same time, ministries continue using their own websites for consultations.
- Costa Rica has expanded stakeholder engagement practices, such as forward planning and a more intensive use of the SICOPRE, which is a centralised webpage that makes regulatory impact assessments (RIAs) and public consultations available. It also allows for comments by the public, to which regulators respond.
- Greece has increased the frequency with which it posts draft primary laws on its consultation portal for the public to comment on and it now publishes a list of laws to be prepared or modified in advance. It has also developed written guidance on how to conduct stakeholder engagement for primary laws.
- Iceland has significantly improved its consultation system over the past years. It launched a new centralised interactive consultation website where stakeholders can provide their comments both at the early and late stages of the consultation process. The website now also provides access to preliminary RIAs, draft regulations, and a summary explaining how comments impacted the proposal. Additionally, Iceland encourages the participation of the general public through social media for some consultations, and the public can register to receive e-mail alerts when new consultations are posted online.
- Public consultations in Latvia are now systematically conducted at a late-stage of policy development and stakeholders benefit from having a broader range of supporting material to help focus their input into policy proposals.
- Netherlands now offers written guidance to policy makers on how to conduct stakeholder engagement. In the past three years it began to carry meetings at an early-stage of policy development with SMEs, as part of their SME Test.
- In Norway the regulatory oversight body has strengthened its capabilities to scrutinise regulatory proposals and provide comments on stakeholder engagement activities.
- Spain now lists all ongoing consultations on its centralised online platform and allows citizens to engage before regulatory development starts and at the draft regulation stage.

Get to know each other before proposing

Citizens can offer valuable inputs on the feasibility and practical implications of regulations. Meaningful stakeholder engagement can lead to higher compliance with regulations, in particular when stakeholders feel that their views have been considered. From a regulatory policy perspective, this entails granting members of the public sufficient opportunity to help shape, challenge, and reform the regulations that they encounter in their daily lives. Too often we witness examples where decisions are made without the involvement of those affected, much to the detriment of society (Chapter 1).

Everyone is affected by laws including citizens, businesses, consumers, and employees (as well as their representative organisations and associations), the public sector, non-governmental organisations, international trading partners, and other stakeholders that can also be disadvantaged, or less influential groups (OECD, 2012[1]). Policy makers should be aware that these groups have different means (e.g. in

terms of resources and time) and should tailor engagement strategies accordingly to ensure that all voices have the opportunity to be heard (OECD, 2009[4]; OECD, 2015[5]).

The *OECD 2012 Recommendation on Regulatory Policy and Governance* provides three broad tenets of communication, consultation, and engagement that policy makers should adhere to (Box 2.2).

Box 2.2. Communication, consultation and engagement: *OECD 2012 Recommendation on Regulatory Policy and Governance*

The *2012 Recommendation* called on governments to follow principles of open government, including transparency and participation in the regulatory process to ensure that regulations serve the public interest and are informed by the legitimate needs of those interested in and affected by regulation.

The *Recommendation* sets specific guidance for governments and policy makers when consulting on the design, development and revision of regulations:

- Co-operate with stakeholders on reviewing existing and developing new regulations.
- Actively engage all relevant stakeholders during the regulation-making process.
- Design consultation processes to maximise the quality of the information received and its effectiveness.
- Consult on all aspects of impact assessment analysis and using, for example, impact assessments as part of the consultation process.
- Provide meaningful opportunities (including online) for the public to contribute to the process of preparing draft regulatory proposals and to the quality of the supporting analysis.
- Make available to the public, as far as possible, all relevant material from regulatory dossiers including the supporting analyses, and the reasons for regulatory decisions as well as all relevant data.
- Structure reviews of regulations around the needs of those affected by regulation, co-operating with them through the design and conduct of reviews.
- A complete and up-to-date legislative and regulatory database should be freely available to the public in a searchable format through a user-friendly interface over the Internet.

Source: (OECD, 2012[1]).

The following sections will refer to either early or late stage consultation. *Early stage* consultation is at a point in time where policy makers have identified that a public policy problem exists and are considering various ways to solve it. *Late stage* consultation is at a point in time where the decision to regulate has been made.

Communication is a key factor to every successful relationship

A clear overarching strategy that outlines how communication will take place, and what information will be communicated to stakeholders is important. The strategy helps to set community expectations about the channels and forms of communication that will be used. It can also be used to hold policy makers to account.

How governments communicate with affected parties is crucial to receiving input as part of the development of regulations. This looks to the various means of communications used by policy makers when engaging with stakeholders. The most appropriate means of communication will vary depending on the policy proposal at hand, the resources and capacities of the affected stakeholders, as well as the stage in policy development.

Continuing a larger digital government trend (OECD, 2014[6]), the majority of OECD members list consultations on a central platform, acting as a single entry point for stakeholders. Countries have taken a variety of approaches when designing central platforms (Box 2.3). Information on public consultation webpages can be tailored to better signal to stakeholders the types of consultations that might be of relevance to them. For instance in Spain, the consultation webpage clearly differentiates between proposals that seek input on the policy problem and potential solutions, and those where a preferred regulatory option has been identified and a draft regulation is available.

Box 2.3. Many OECD members use centralised websites for stakeholder engagement

The use of a central government website to publish consultations is a common practice across OECD members, with a majority reporting using centralised websites on a systematic basis for consultations on primary laws and subordinate regulations. In these countries, consultations are posted in mainly four formats:

1. **Stand-alone consultation platform**: These websites are used solely for the purpose of hosting public consultations and are completely separate from other governmental websites. Examples of countries using such platforms are:

- **Colombia:** www.sucop.gov.co/;
- **Denmark:** hoeringsportalen.dk/;
- **Estonia:** eelnoud.valitsus.ee/;
- **France:** www.vie-publique.fr/consultations;
- **Greece:** www.opengov.gr/home/category/consultations;
- **Iceland:** samradsgatt.island.is/;
- **Israel:** www.tazkirim.gov.il;
- **Italy:** www.consultazione.gov.it and partecipa.gov.it;
- **Mexico:** www.cofemersimir.gob.mx/portales;
- **Netherlands:** www.internetconsultatie.nl/;
- **Poland:** legislacja.rcl.gov.pl/; and
- **Portugal:** www.consultalex.gov.pt/.

2. **Part of a government website**: Consultations are hosted on a sub-website located on a government's general website rather than on a separate or standalone platform. For example:

- **Canada:** www.canada.ca/en/government/system/consultations/consultingcanadians.html;
- **Japan :** public-comment.e-gov.go.jp/servlet/Public ;
- **Lithuania:** epilietis.lrv.lt/lt/konsultacijos/;
- **Norway:** www.regjeringen.no/no/dokument/hoyringar;
- **Slovenia:** e-uprava.gov.si/drzava-in-druzba/e-demokracija.html;
- **Spain:** transparencia.gob.es;
- **Sweden:** www.regeringen.se/remisser/; and
- **Switzerland:** www.fedlex.admin.ch/fr/consultation-procedures/ongoing.

3. **Ministries' website:** Consultations are hosted on ministries' individual webpages, but a central webpage acts as a single gate that redirects stakeholders to the relevant open consultations.

- **Chile:** open.economia.cl/participacion-ciudadana/;

- **Germany:** www.bundesregierung.de/breg-de/service/gesetzesvorhaben; and
- **United Kingdom:** www.gov.uk/search/policy-papers-and-consultations.

4. **Parliamentary webpage:** There are cases where OECD members use parliamentary webpage as a central depository to post public consultations on primary laws. For example:

- **Austria:** www.parlament.gv.at/pakt/mesn/.

Source: Indicators of Regulatory Policy and Governance (iREG) Survey 2021.

Governments can help to direct stakeholders' attention to where it is needed most to support policy making. For instance, it may make sense at a more nascent stage to present a policy problem and direct stakeholders' feedback to help determine potential solutions. Apart from potentially improving regulatory design, this also can improve regulatory "outputs" such as improved compliance rates, desired behavioural changes in market participants, and improved trust in government. Moreover, improving regulations has the potential to improve economic performance by fostering a more competitive and inclusive society (OECD, 2009[4]; OECD, 2017[7]).

Consultations may be better suited to focus on implementation issues at later stages of regulatory design. Generally at this point the decision to regulate has been made and there is limited scope to change the preferred regulatory path identified. Usually at this stage a draft regulation is made available for stakeholders to view and comment on. Stakeholders can still provide valuable input to improve the efficacy of regulations at this point, e.g. by highlighting competing or inconsistent objectives, and raising compliance and enforcement issues. In both cases, the way in which questions are put to stakeholders matters as they can affect respondents' behaviour and answers (Box 2.4).

Box 2.4. OECD members use guided consultations, to help resolve behavioural barriers to consultation

The objective of consultations is to ensure regulations are designed and implemented in the public interest. This means including various stakeholders, such as, citizens, businesses, trade unions, civil society organisations, and public sector organisations, in the process and hearing their views.

However, engagement processes can suffer from unintentional behavioural biases and barriers that affect outcomes. For example, the way a question is framed can affect how people respond to it, or holding a one-off physical meeting in a difficult to reach area will affect who will be able to contribute. As a consequence, regulators can end up making a regulatory proposal based on opinions that may not necessarily reflect true preferences.

The field of behavioural insights (BI) has been applying lessons from the behavioural sciences to public policy for over a decade, but has mostly been to changing individual behaviour in the implementation phase of policy (OECD, 2017[8]); (OECD, 2019[9]). While applications to stakeholder engagement are limited, there is robust literature on loss aversion, choice architecture and decision making (Tversky and Kahneman, 1974[10]) that can help policy makers take behaviourally-informed approaches to engagement processes.

Pre-set questions to reduce transaction costs during public consultations

A common starting point for a BI approach to a policy issue is to look at how difficult an action is to accomplish. If you make something easy, people will be more likely to do it (OECD, 2019[9]). Participating in consultations during the development of regulations can be time consuming and burdensome. Some countries have tried to reduce this burden to citizens and businesses by making those documents that are pertinent to the consultation readily available in the same website that the

consultation is conducted. In addition, there are countries that also guide the consultation by setting up questions for the public to answer regarding the draft regulation or the policy problem that is up for regulation. While not necessarily intentionally behaviourally-informed, these efforts do help resolve some behavioural barriers for participating in engagement processes.

For instance, the Netherlands conducts an important part of public consultations on their website www.internetconsultatie.nl. With a number of consultations on draft regulations, the regulator posts open-ended questions that the public can answer to provide its feedback to the proposal. Questions can be simple and open (for example "What do you think is good about this proposal?"), whilst other questions can be more complex to answer (e.g., "does this lead to a simpler, less steering and more predictable funding system?").

In the UK, some consultations are also accompanied with a set of questions to guide the participation of the public. These questions are more frequently found in consultations conducted at an early stage of the regulatory process, when the policy problem is being identified and there is not yet a regulatory draft. In some cases, the questions are closed and ask whether members of the public agree with the problems and issues identified, whilst giving the audience the opportunity to explain why they disagree. In other cases, questions are open but more complex and specific to the policy topic at hand (e.g. "how can we ensure these new services develop in a way which encourages new entrants rather than advantaging incumbent suppliers?").

In Hungary, to evaluate whether a proposal is supported by the stakeholders, certain questions in consultations are designed as multiple choice or absolute (i.e., yes/no) closed questions. Questions designed in such a way can aid in determining the support/disagreement with the regulatory proposal.

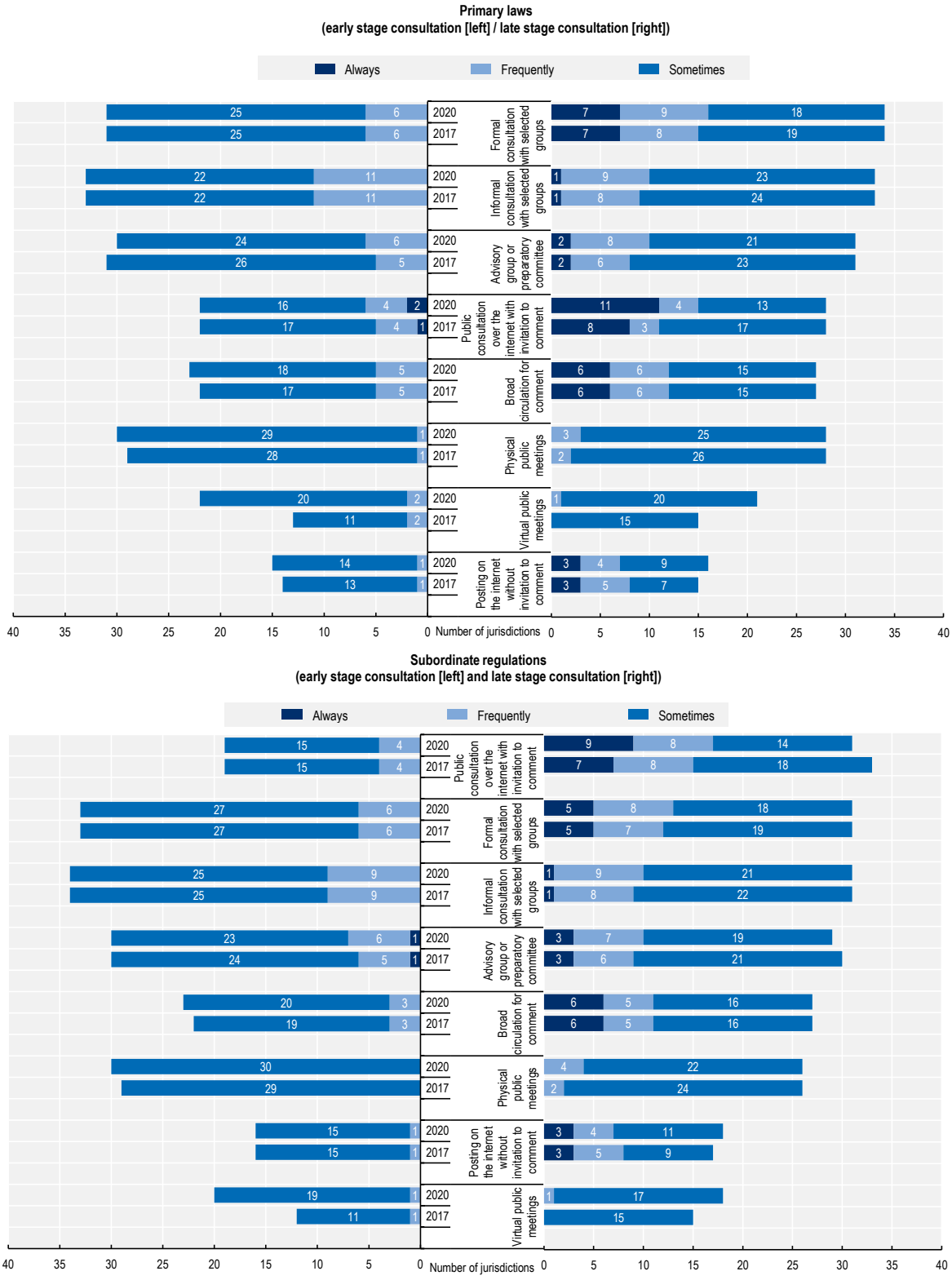
Source: Indicators of Regulatory Policy and Governance (iREG) Survey 2021. For the Netherlands: www.internetconsultatie.nl; for the UK: https://beisgovuk.citizenspace.com/; for Hungary: https://nemzetikonzultacio.kormany.hu/.

Consideration needs to be given to the *modes* of communication. The format of consultation may seem, in and of itself, relatively unimportant in the policy making process. However it plays a vital role in ensuring that stakeholders can understand the input sought. Resilience, creativity, agility and adaptation on the forms of consultations are needed for regulations to fully benefit from stakeholders' feedback (OECD, 2020[11]). Policy makers need to tailor the forms of consultation to, for instance, reflect widespread industry standards (e.g. paper, online, or a variety of forms), cognisant that not all affected stakeholders universally utilise the same communication forms. Inappropriate or underutilised forms of communication runs the risk of excluding stakeholders from the policy making process, thereby undermining a sense of shared ownership, and potentially adversely affecting compliance and trust in eventual regulations (Lind and Arndt, 2016[12]).

The form of consultation adopted by OECD members differs depending on whether the consultations are at an early or late stage of policy development. At an early stage, consultations are more often undertaken on formal and informal bases with selected groups, as well as meetings with advisory groups or preparatory committees (Figure 2.3). The results suggest that consultation at this stage is more selective rather than open to the general public. Such an approach may be appropriate for technical or complex regulatory proposals where expert input is sought, and by its nature tends to be found only across limited groups. For proposals of a more general nature where policy makers are unsure about the magnitude or distribution of impacts it remains important to elicit feedback from a broad range of stakeholders, particularly as some may be "unknown" to policy makers at this stage since the complete range of impacts have yet to be ascertained.

It is most common for OECD members to conduct public consultation over the internet with invitation to comment, as well as other forms of open consultation, for late stage consultations (Figure 2.3). Similar to 2017, around 30% of countries systematically use at least one form of public and open consultation approaches to stakeholder engagement at a late stage for both primary laws and subordinate regulations.

Figure 2.3. Different forms of consultations to fit different needs



Note: Data are based on 38 OECD members and the European Union.
Source: Indicators of Regulatory Policy and Governance (iREG) Surveys 2017 and 2021.

Since 2017 there has been an increase in the use of virtual meetings to engage with stakeholders in some countries, at both early and late stage consultations (Figure 2.3). This reflects the current circumstances as a result of the COVID-19 pandemic which has made some more "traditional" forms of consultation impossible. It will be interesting to see if virtual meetings act as a complement to other methods or starts to replace them once the recovery from the pandemic is underway. While providing more conduits helps to bolster the inclusiveness of consultations, they need to be financially justified. On the other hand, if virtual meetings become the norm, it will remain important to consider whether certain groups of stakeholders still predominantly rely on alternative means, and to find solutions to ensure that they are not unduly excluded from consultation processes.

Timing is everything

Generally consultations should be made available to all citizens (OECD, 2017[7]). Beyond that, specifically determining *who* to consult with effectively means deciding who should be excluded from the consultation process. There may be justified reasons for limiting consultations due to factors such as confidentiality, the subject nature of the proposal (e.g. if it is highly technical, or if expertise lies in only limited areas), and for genuine matters of expediency (although this should not be used as a default excuse to avoid consulting).

Consultation should not be limited too early in the policy development process. At an early stage, the potential impacts of proposals may not be known with certainty, and therefore all potentially affected stakeholders may not be known either. As policy development matures, consultations may be more focussed as alternative options are fully explored and the various impacts assessed. At a late stage of development the group of affected stakeholders may further diminish, for instance, because of the regulatory design itself (e.g. the draft regulation excludes SMEs), by the imposition some sort of threshold or filter (e.g. a regulatory proposal is focussed on only businesses in excess of a certain turnover, amount of pollution emitted etc), or by geographic or locational restrictions.

It is important to allow for sufficient checks and balances within a consultation process. For instance, there is a risk that consulting the "usual suspects" leads to the "usual answers". Policy makers can be assisted in identifying vested interests (and thereby reducing risks of regulatory capture) by consulting broadly allowing other stakeholders to challenge positions put by the "usual suspects" (OECD, 2012[1]).

Stakeholders can themselves form groups to help present more unified and strengthened positions from the views expressed. The groups can help act as a conduit to collect comments from individual affected stakeholders. OECD members have reached out to these groups as well as formed groups of their own with specific stakeholders (Box 2.5).

Box 2.5. Consultations with different groups of stakeholders provide different perspectives on policy problems

Informal consultations

When developing some of their regulations, the majority of OECD members engage in informal consultations with different social partners and stakeholders that might be affected by draft regulations being consulted. These includes NGOs, social groups, employer and employee associations.

- **Costa Rica, Iceland, Korea** and **Poland** invite academics or experts to participate in informal consultations.
- In **Colombia** some policy makers have informal sectoral consultations and roundtables at different stages of the regulatory cycle to inform the development of regulations.

- The **Canadian** Government Departments frequently meet with stakeholders to discuss regulatory proposals. For instance, during the development process of a new patient safety legislation, families, patients, healthcare providers and industry representatives were involved in the consultations process. The consultation helped regulators to identify safety improvements in the proposed regulation.
- **France** frequently holds informal consultations with various associations such as trade unions, professional organisations, environmental protection associations, and consumer associations.

Formal consultations

Most OECD members invite social partners and stakeholders who might be affected by a proposed regulation to formal consultations during the development of at least some of their regulations.

- In **Germany**, representatives of various associations are invited to participate in formal consultations. These associations include unions, legal persons or groups that promote common interests, such as economic, social, cultural or political interests (e.g., employers' associations or associations of workers).
- In **Lithuania**, representatives of The Small and Medium-sized Business Council and of the Tripartite Council (established by the tripartite co-operation between the Government, trade unions and employers' organisations) are invited to contribute to consultations.
- The **Netherlands** conducts panel discussions with individual SME entrepreneurs to examine the potential impact of regulations on this group of companies.
- In **Norway**, the Ministry of Education carried out in 2018 a formal consultation with relevant social partners that led to an agreement on a strengthened and more flexible adult education.
- In **Sweden**, legislative proposals are sent for consultation to the relevant authorities, organisations, municipalities and other stakeholders before the government submits the final draft of the regulation.

Consultations with advisory groups and preparatory committees

Most of the OECD members have designated advisory groups or preparatory committees that are consulted during the regulatory process. Members of these groups are predominantly selected based on their experience and expertise in the field that is being regulated. For instance:

- The **Danish** government appointed a preparatory committee to aid in modernising the Holiday Act. The government appointed the members representing social partners and the Panel on Digital Growth with the purpose to provide the government with advice on how the Danish businesses can benefit from digitalisation and technological advancement.

Source: Indicators of Regulatory Policy and Governance Survey 2021.

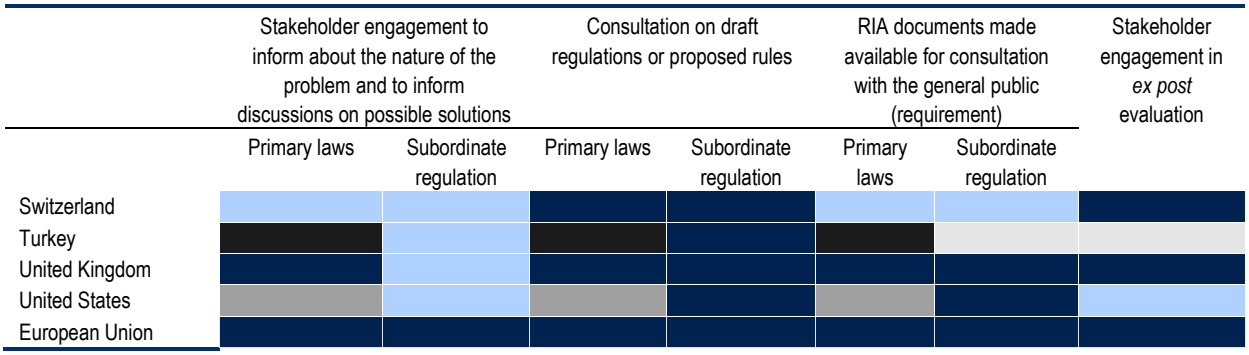
Deciding *when* to consult is a central facet of decision making. Generally there are four distinct stages of consultation: to inform the community in advance; at the early and late stages during policy development; and on the revision and modification of existing laws (OECD, 2012[1]). Establishing when to consult can be of critical importance to the design of the resultant policy: too early and stakeholders may not be able to help identify potential solutions; too late and stakeholders may feel that consultation is an obligatory step for policy makers in order to progress their policies to the decision stage. The solution is to get consultation "just right", but it does not follow that it is necessarily between the early and late stages. As noted above, early and late stage consultation are both important in their own right.

It is not necessarily appropriate to consult at each stage for every regulatory proposal. For instance, providing advanced notice about closing an identified regulatory failure may lead to worse social outcomes than consulting only at a later stage because of the socially undesirable behaviour it may incentivise. In a similar vein, where there are strong continued links between policy makers and stakeholders there may be less of a need to conduct more formal consultation during earlier stages of policy development as both parties are well informed. However it would generally be expected that consultations take place at a later stage of policy development.

OECD members do not yet systematically allow for the participation of stakeholders in the development of regulations throughout the policy cycle. Most OECD countries consult with stakeholders on draft proposals, but only a few consult systematically at an early stage (Table 2.1), a situation that has not improved in the last few years.

Table 2.1. Better late than never, but earlier engagement is still needed

	Stakeholder engagement to inform about the nature of the problem and to inform discussions on possible solutions		Consultation on draft regulations or proposed rules		RIA documents made available for consultation with the general public (requirement)		Stakeholder engagement in *ex post* evaluation
	Primary laws	Subordinate regulation	Primary laws	Subordinate regulation	Primary laws	Subordinate regulation	
Australia	■	■	■	■	■	■	■
Austria	▒	▒	■	▒	▒	▒	▒
Belgium	■	■	■	■	▒	▒	▒
Canada	■	■	▒	■	▒	■	■
Chile	▒	▒	▒	▒	▒	▒	■
Colombia	▒	▒	▒	■	▒	▒	▒
Costa Rica	▒	▒	■	■	▒	■	▒
Czech Republic	▒	▒	■	■	▒	▒	▒
Denmark	▒	▒	■	■	■	▒	▒
Estonia	▒	▒	■	■	■	■	■
Finland	▒	▒	■	■	▒	▒	▒
France	▒	▒	▒	▒	▒	▒	▒
Germany	▒	▒	■	■	▒	▒	▒
Greece	▒	▒	■	■	▒	▒	▒
Hungary	▒	▒	■	■	▒	▒	▒
Iceland	■	▒	■	▒	■	▒	■
Ireland	▒	▒	▒	▒	▒	▒	▒
Israel	▒	▒	■	■	▒	▒	■
Italy	■	■	▒	▒	▒	▒	▒
Japan	▒	▒	▒	▒	▒	▒	▒
Korea	▒	▒	■	■	■	■	■
Latvia	▒	▒	■	■	▒	▒	▒
Lithuania	▒	▒	■	■	■	■	▒
Luxembourg	▒	▒	■	■	▒	▒	■
Mexico	▒	▒	■	■	■	■	▒
Netherlands	▒	▒	■	■	▒	▒	▒
New Zealand	■	■	■	■	▒	▒	■
Norway	▒	▒	■	■	▒	▒	■
Poland	▒	▒	■	■	■	■	▒
Portugal	▒	▒	■	■	▒	▒	▒
Slovak Republic	▒	▒	■	■	■	■	▒
Slovenia	▒	▒	■	■	▒	▒	▒
Spain	▒	▒	■	■	■	■	▒
Sweden	▒	▒	■	■	■	■	■



Systematic approach
For some regulations
Never
Not applicable
Not available*

Notes: Data are based on 38 OECD members and the European Union. * Due to a change in the political system during the survey period affecting the processes for developing laws, data for Turkey are not available for stakeholder engagement in developing regulations and RIA for primary laws.
Source: Indicators of Regulatory Policy and Governance (iREG) Survey 2021.

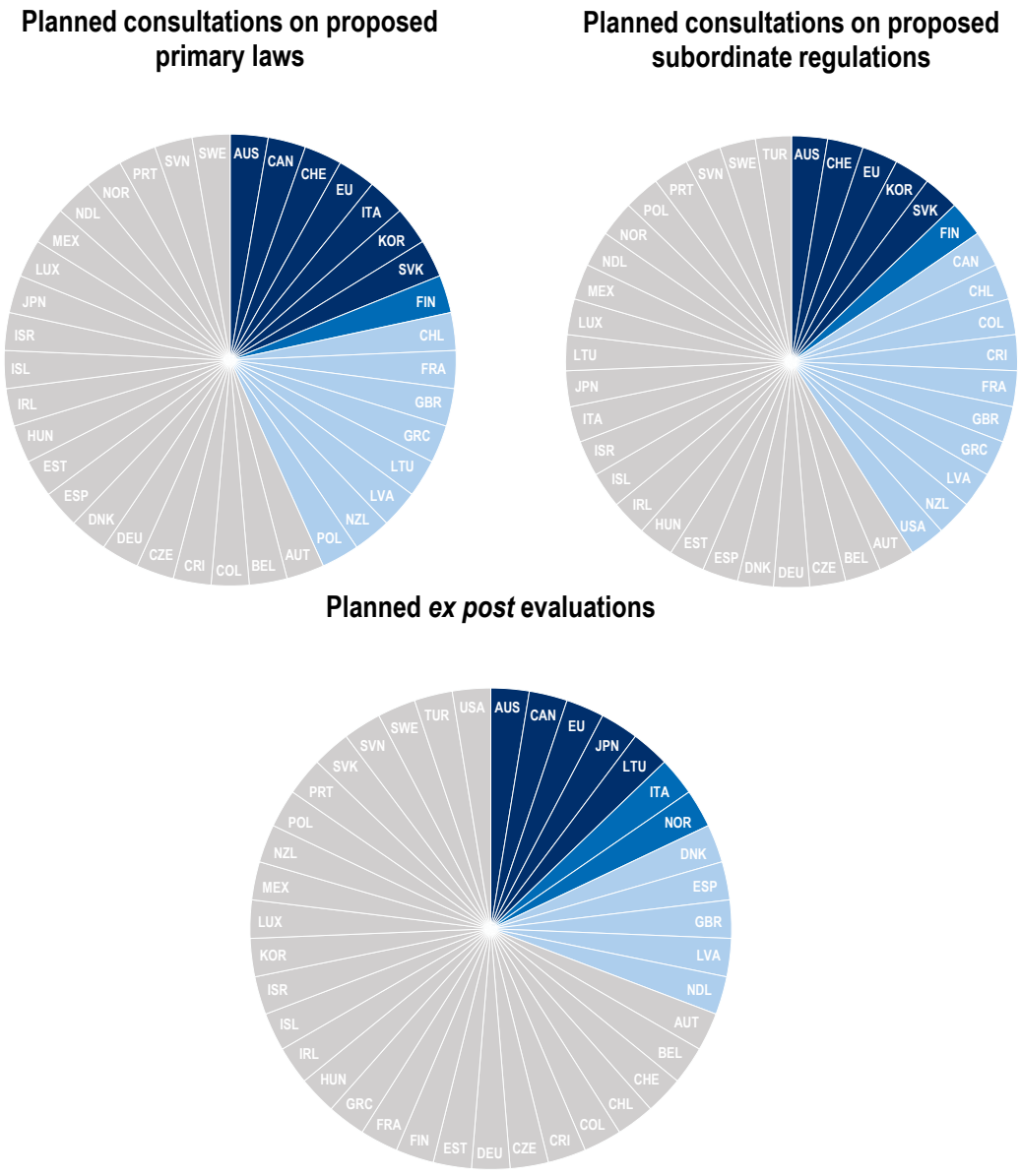
Announcing forthcoming consultations assists stakeholders to organise themselves in order to focus their efforts on the consultations that affect them the most. Receiving better organised information from stakeholders can help to improve policies from the outset. It may mean that potential alternative solutions can be ruled out earlier in the development process than they otherwise would be, thereby saving time, resources, and consultation energy with affected parties. More fundamentally it demonstrates a strong adherence to the principles of open government (OECD, 2017[7]).

Announcing in advance that consultations will take place remains an uncommon practice across the OECD. Only six OECD members and the EU do so for all consultations on primary laws, and even less do so for all consultations on subordinate regulations (Figure 2.4).

It is also uncommon that stakeholders are informed in advance that evaluations of existing regulations will take place (see Figure 2.4). Only six countries and the EU systematically inform the public in advance of *ex post* evaluations that will be carried out, while five countries do so only for some of their planned *ex post* evaluations. As an example, Canada publishes a regulatory review plan two years in advance, and ministries in Italy are required to also publish a two-year plan of their upcoming *ex post* evaluations.

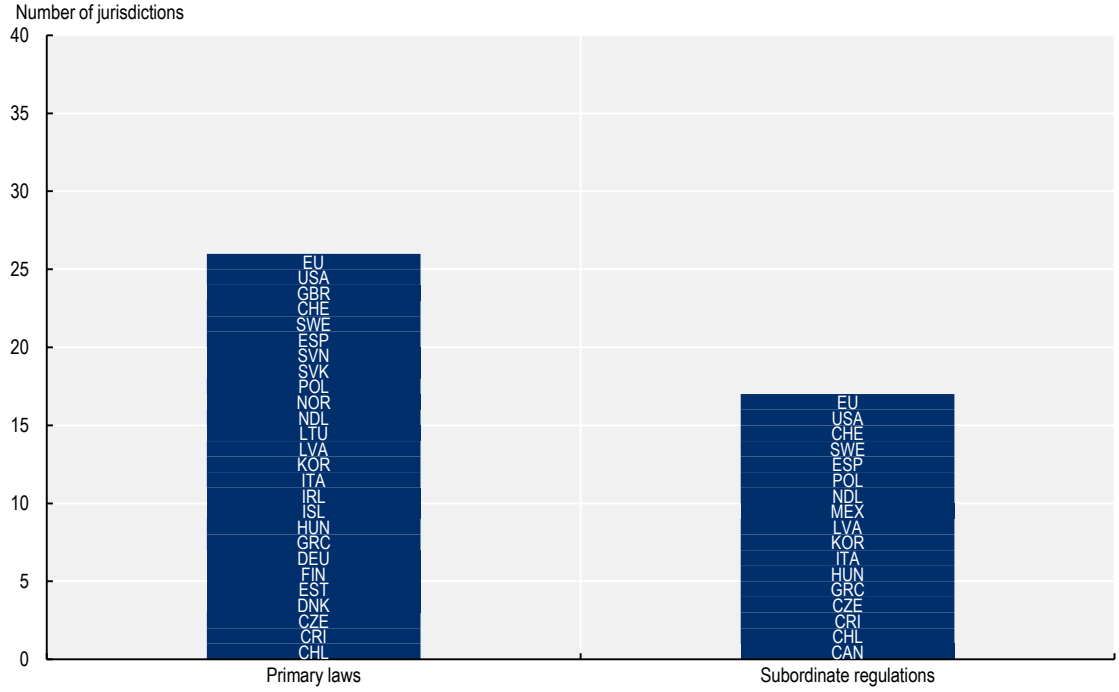
OECD members adopt different communication approaches when informing the general public or particular stakeholders about forthcoming consultations. Some countries use websites to announce future consultations, while others publish a road map or other early-warning document. For instance, members of the public can sign-up on both the UK and European Commission's websites to receive email alerts about upcoming public consultations. Similarly, Estonia uses an automatic alert system from a dedicated Information System for Legislative Drafts, while the Slovak Republic publishes a set of preliminary information regarding regulatory proposals, including contact information and the dates of expected public consultation. At a more general level, around about two-thirds of OECD members publish a list of primary laws that they plan to prepare or modify, while almost half do so for subordinate regulations (Figure 2.5). In some cases these plans are open for consultation, like in Costa Rica, where all executive entities are required to publish their plans for Better Regulation that present the planned administrative procedures to be modified annually. Even though this is not an advance notice of upcoming consultation, it alerts the public of upcoming amendments to regulations where the public can ask to participate in consultations if they are not made available.

Figure 2.4. Predictability: Are stakeholders aware that they will be consulted or that *ex post* evaluations will take place?



Note: Data are based on 38 OECD members and the European Union.
Source: Indicators of Regulatory Policy and Governance (iREG) Survey 2021.

Figure 2.5. In some OECD members the public know the laws planned to be prepared or modified in the near future



Note: Data are based on 38 OECD members and the European Union.
Source: Indicators of Regulatory Policy and Governance (iREG) Survey 2021.

Minimum consultation periods help to ensure that stakeholders have the opportunity to provide input on regulatory proposals. That said, some operational flexibility is required to ensure that the period given is appropriate for each proposal at hand. More than two-thirds of OECD members have formalised minimum consultation periods, and generally range from as little as eight days to as much as 12 weeks. For instance, in Belgium, some consultations are open from four to six weeks, and Sweden, Switzerland and the European Commission have a minimum period of 12 weeks. Minimum periods do not systematically apply to consultations for all regulations, as countries decide on the parameters. For instance, in Chile proposals where a high impact RIA is required, the period of consultation should be at least 10 days.

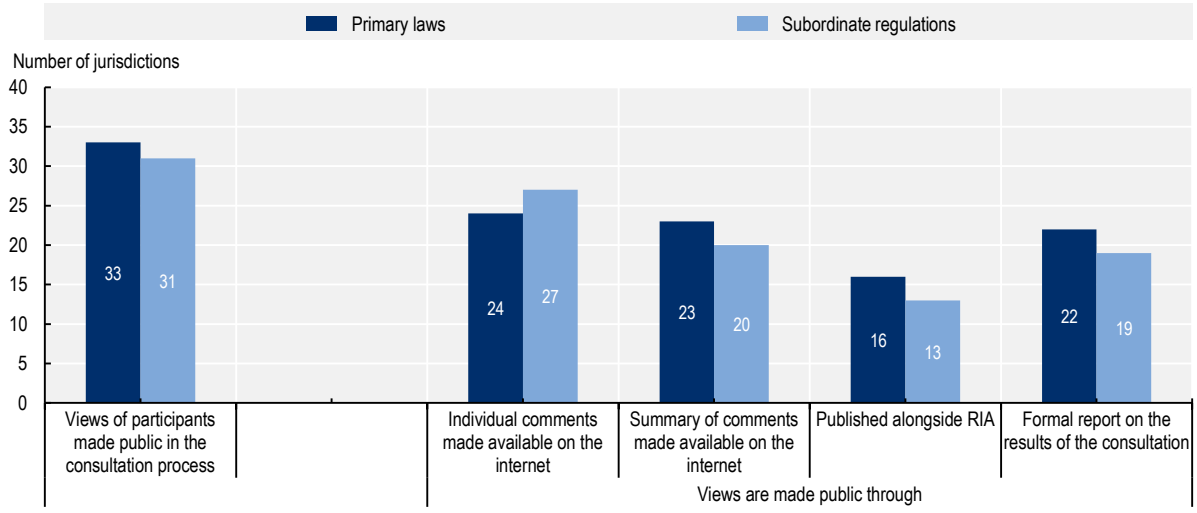
Engagement requires a long term commitment from both parties

Engaging with stakeholders allows policy makers to question, consider, test, and revise different approaches to a policy problem, understand citizens' and other stakeholders' needs and improve trust in government (OECD, 2016[13]). Viewed in this way, an iterative approach to consultations is essential. Facilitating consultations through *multiple rounds* assists policy makers overcome stubborn resistance to change (e.g. from incumbent vis-à-vis potential firms), enable participants to see how they have influenced policy development, and build a shared sense of policy ownership, hence the use of the term "engagement" (OECD, 2017[7]; OECD, 2015[14]).

One of the starting points of engagement is to publish comments received during consultations. Publication helps to demonstrate an open and inclusive approach to policy making. It also assists in assessing the robustness of evidence and information presented by stakeholders (either by policy makers, other stakeholders, or the public at large).

A majority of OECD members publish participants' views from consultation processes, either as the comments themselves, or as an online summary (Figure 2.6). Switzerland for example publishes a report summarising comments received, as well as every comment received (even those of individuals); regardless of the number. In some OECD countries, such as Iceland and the Netherlands, consultations are systematically conducted on interactive websites where participants can see "live" comments from other stakeholders and provide direct feedback. In addition to consultation websites, the UK and Canada have also relied on social media platforms (e.g. Twitter, Facebook, etc.) to conduct consultations, where comments received are publicly available.

Figure 2.6. OECD members generally have a strong commitment to publishing the views of stakeholders



Note: Data are based on 38 OECD members and the European Union.
Source: Indicators of Regulatory Policy and Governance (iREG) Survey 2021.

Decision makers are usually made aware of consultation results. Only in a minority of OECD members are consultation results not provided to decision makers (18% for primary laws and 16% for subordinate regulations, respectively). In 2021, close to two-thirds of OECD members included the views expressed in the consultation process in the resulting RIA; a surprising result given that only one-third of countries are policy makers required to consider consultation comments when developing final proposals.

Responding to comments received is an integral aspect of strong stakeholder engagement (Lind and Arndt, 2016[12]). This includes explaining how they were taken into account for the revision of the draft regulation and, when relevant, explaining their exclusion. Policy makers' treatment of stakeholders' input can either encourage or discourage stakeholders' decisions to participate in future consultations.

Responding to consultation comments remains rare across the OECD (Box 2.6). Currently, less than one-third of countries systematically require a public response to consultation comments; however, in some countries there are public responses to comments even in the absence of a requirement. In those OECD members that have invested in interactive websites, policy makers also provide reactions and comments to stakeholder views as part of an effective "live debate" on policy proposals. Such an approach has brought stakeholders (and citizens more broadly) closer to decision makers, helped boost transparency and accountability, and reduced the transactions costs of consultations. It may have also helped to boost the level of stakeholder engagement on future proposals.

Box 2.6. Responding to and considering comments received during public consultation incentivises participation and improves trust

Some OECD members have made responding to and considering received comments an important part of their overall stakeholder engagement processes. For instance:

- **Colombia:** Some regulatory bodies, such as the Environment Ministry, publish the responses to stakeholders' comments online. They indicate if a comment is accepted or rejected with an explanation as to the decision, and if accepted, how it is taken into account in the regulatory proposal.
- **Costa Rica:** Once consultation comments are analysed, the proposing policy maker makes publicly available a matrix of observations and responses to received comments. In addition, each stakeholder participating in the consultation receives by email a response to their comment individually.
- **Germany**: Requirements to consult on drafts with all types of groups (primarily as part of the joint rules of procedure) include not only the obligation to ask stakeholders for an opinion but also to take these opinions into serious consideration.
- **Iceland:** Policy makers publish consultation conclusions on the government's consultation portal. The report highlights the main points raised by stakeholders as well as their suggestions for improvement. In addition, certain concerns of stakeholders are addressed in the report.
- **Mexico:** Policy makers have the obligation to respond in writing to comments received during public consultation of regulatory proposals. Responses to the comments are made public online in the electronic file of each of the publicly accessible regulatory proposal.
- **Slovak Republic**: After a comment on a draft regulation open for public consultation reaches 500 reactions from other stakeholders, the regulator is required to react to the comment, and furthermore is required talk to these stakeholders. In addition, for every comment policy makers indicate whether the comment is major or minor and whether it has been accepted, rejected, or partly accepted with the corresponding reasoning for the decision.

Source: Indicators of Regulatory Policy and Governance Survey 2021.

Consulting with stakeholders in times of crises

The COVID-19 pandemic has made it virtually impossible to carry out physical consultations. The necessary speed of government action, and the rapid evolution of the situation, has shaped engagement with stakeholders and public consultations for many governments. The OECD surveyed countries' initial responses to the COVID-19 pandemic up until mid-September 2020.

Several OECD members made use of exception clauses that were already part of their consultation requirements before the pandemic. Such exceptions give regulators certain flexibility in the event of emergency situations without the need to formally bypass requirements. The Netherlands and Norway reported it was not necessary to bypass consultation requirements due to the COVID-19 pandemic because exceptions already existed. As Norway explained, its stakeholder engagement guidance document states that circulation for consultation of draft laws and regulations may be omitted if measures require swift implementation to avert serious outcomes with regard to life, health and the environment.

Many OECD members that made use of exemption mechanisms also introduced some form of emergency legislative procedures for putting in place crisis responses, thereby leaving less time for scrutiny by stakeholders. Along those lines, Finland reported that open consultation has often been conducted before

introducing COVID-19 response measures, but that a shorter time period for such stakeholder engagement applied. Several OECD members made use of similar built-in exemption mechanisms, among which are Korea, Luxembourg, New Zealand and Switzerland.

In contrast, there are OECD members that reported that they did not change any of their consultation practices or requirements during the pandemic. Israel reported a number of public consultations on regulatory crisis responses, which followed regular rules of procedure. According to the government, Israel has not shortened its formal requirement for a minimum period for consultations with the public, including citizens, business and civil society organisations. The European Commission actually extended its public consultation periods to allow stakeholders more time to organise their responses. Around two-thirds of the public consultations undertaken by the Commission between June and end of September 2020 have been extended by one to eight weeks.

Some consultation with stakeholders has intensified due to the pandemic, as some regulators have relied on input from regulated industries to design emergency regulations. For instance, the UK Office of Communication (Ofcom) has reported holding more roundtable meetings between the regulator, government and industry in the crisis period than in the preceding six months.

As seen in other public sectors, the need for social distancing had an enhancing effect on the digitalisation of administrations and government. Poland, like other countries, reported that for the first time during the pandemic, public consultations were held in the form of videoconferences.

Regulatory impact assessment

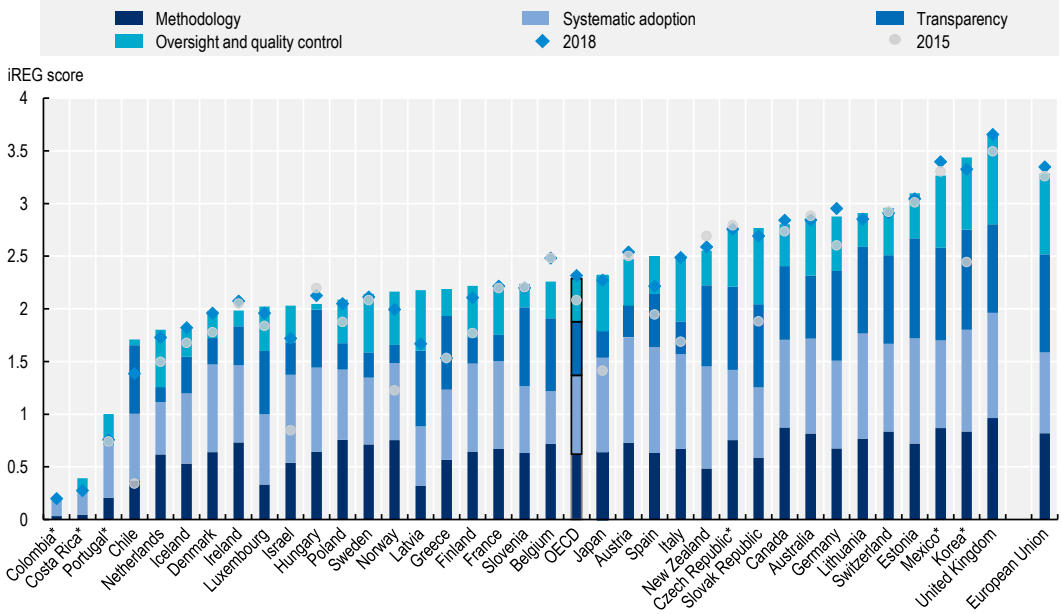
Composite indicators and summary results

On average, OECD members' RIA practices improved slightly in relation to subordinate regulations. The biggest development for subordinate regulations stemmed from improvements in oversight and quality control as well as, to a lesser extent, from more transparent RIA procedures. Although on average there has been little improvement in relation to RIA conducted on primary laws, some OECD members have nevertheless undertaken recent reforms.

Countries which made substantive changes to their RIA system include: Chile, Greece, Israel, Latvia, Portugal, and Spain.

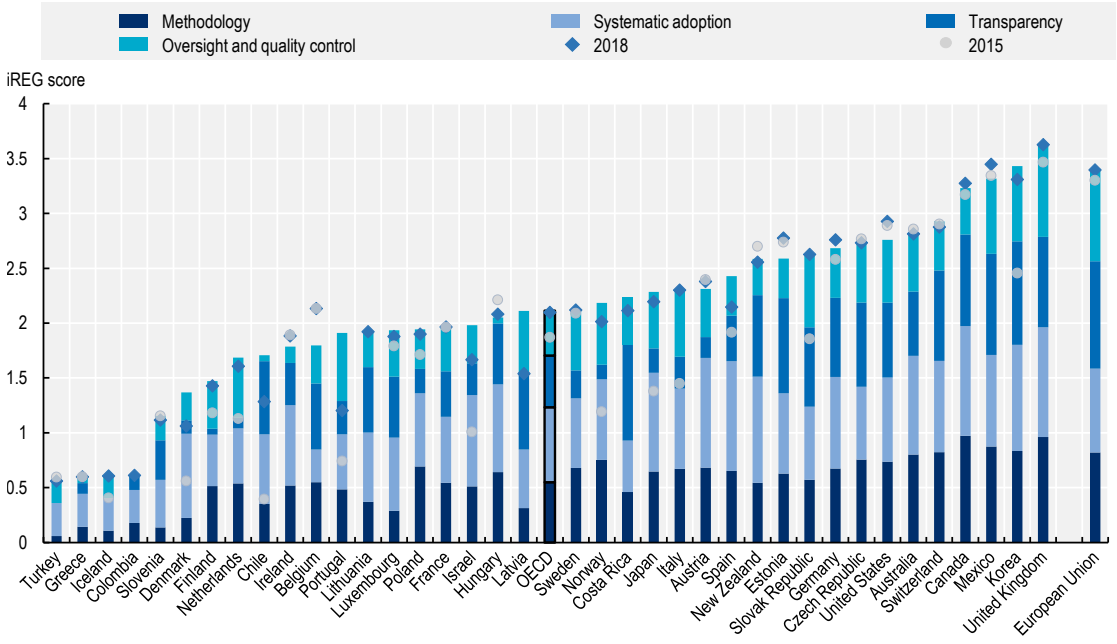
- Chile adopted a new Presidential Instructive that made RIAs mandatory for all primary laws initiated in the executive and for subordinate regulations. It now requires that RIAs consider alternative non-regulatory options, the likely distributional effects of proposals and a range of factors, including impacts on competition, small businesses, trade, environment and gender equality.
- Regulators in Greece are now required to assess and quantify the impacts of regulations on a large range of factors, including gender equality and social goals.
- Israel established its Better Regulation Department, which is entrusted with overseeing RIAs.
- Latvia's recent substantive reforms include a requirement to assess a wider range of costs in RIAs, such as financial, budgetary, and administrative costs, as well as an expectation to prepare RIAs early in the policy-making process to later undergo public consultation with the draft law.
- Portugal formally established the use of RIA and has since expanded it, particularly for subordinate laws. Portugal has also reinforced the scrutiny of quality of RIA for subordinate regulations.
- Spain too has introduced bodies whose functions include watching over the legal quality of regulations initiated by the executive and providing feedback and recommendations on Impact Assessments to regulators.

Figure 2.7. Composite indicators: regulatory impact assessment for developing primary laws, 2021



Notes: Data for 2014 are based on the 34 countries that were OECD members in 2014 and the European Union. Data for 2017 and 2021 include 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 Colombia, Costa Rica, Czech Republic, Korea, Mexico, and Portugal, where a higher share of primary laws are initiated by the legislature. Due to a change in the political system during the survey period affecting the processes for developing laws, composite indicators for Turkey are not available for stakeholder engagement in developing regulations and RIA for primary laws.
Source*:* Indicators of Regulatory Policy and Governance Surveys 2014, 2017 and 2021.

Figure 2.8. Composite indicators: regulatory impact assessment for developing subordinate regulations, 2021



Notes: Data for 2014 are based on the 34 countries that were OECD members in 2014 and the European Union. Data for 2017 and 2021 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, 2017 and 2021.

Making better decisions with RIA

Regulatory Impact Assessment (RIA) is a central aid to decision making, helping to provide as much as possible objective information about the likely benefits and costs of particular regulatory approaches, as well as critically assessing alternative options – including non-regulatory ones. A well-functioning RIA system can assist in promoting policy effectiveness, efficiency, and 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, or that unintended consequences would exceed any of the purported benefits. 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.

Building on the *OECD 2012 Recommendation of Regulatory Policy and Governance* (OECD, 2012[1]), the OECD has recently published *Best Practice Principles on Regulatory Impact Assessment* (OECD, 2020[15]). These principles provide more detailed information and guidance for member and non-member countries on the critical elements required to develop and sustain a well-functioning RIA system (Box 2.7).

Box 2.7. Summary of the best practice principles for regulatory impact analysis

A well-functioning RIA system can help policy makers identify the potential outcomes of proposed regulations and determine whether regulations will achieve the intended objectives.
RIA should reflect the following critical elements:

- Regulatory impact assessment should be part of the policy implementation process/cycle
- It should start at the beginning of the regulation-making process
- It should clearly and systematically identify the problem and the related regulatory objectives
- Alternative solutions, their costs and benefits are identified and assessed
- It is developed transparently in co-operation with relevant stakeholders
- Its results are clearly and objectively communicated.

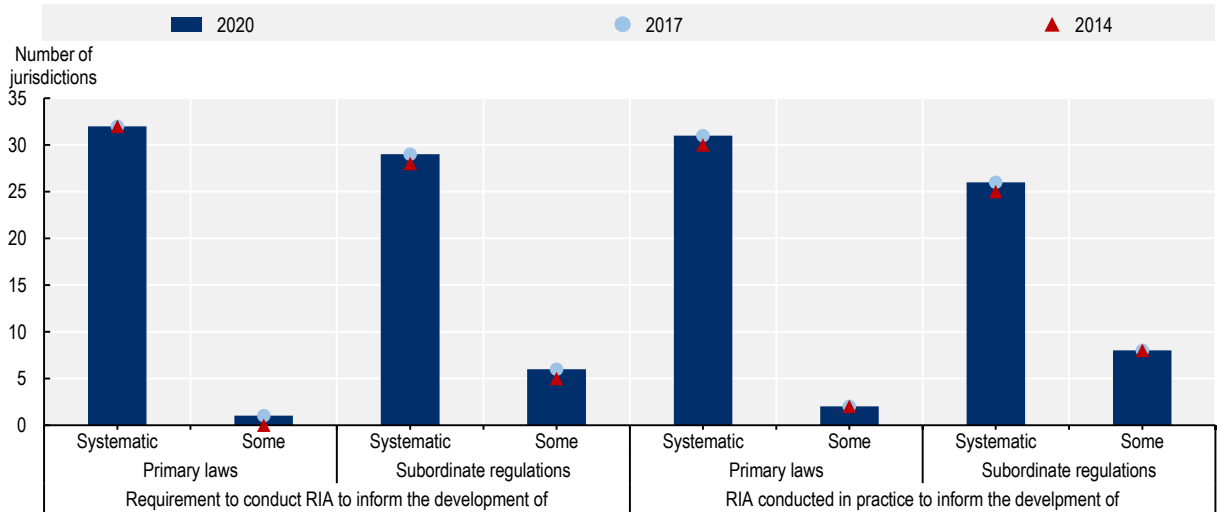
The best practice principles relate to the following aspects:

- The role of governments to ensure quality, transparency and stakeholder involvement in the process
- Full integration of RIA in the regulatory governance cycle respecting administrative and cultural specifics of the country
- Strengthened accountability and capacity over RIA implementation
- Using appropriate and well targeted methodology
- Appropriate communication and availability of RIA results to the public
- Continuous monitoring, evaluation and improvement of RIA.

Source: (OECD, 2020[15]).

OECD members have recognised the importance of RIA: even in 2014, only two members for primary laws and one for subordinate regulations did not have a formal requirement to conduct RIA in place. In 2021, all OECD members now have a requirement in place to conduct RIA on at least some laws, and there has also been a slight rebalancing as members move away from a blanket requirement to a more proportionate approach (see below for further details). A gap remains between a requirement to conduct RIA and what actually happens in practice, albeit that gap has slowly reduced since 2014 (Figure 2.9).

Figure 2.9. The gap between RIA requirements and practice is slowly diminishing over time



Note: Data are based on 34 OECD member countries and the European Union.
Source: Indicators of Regulatory Policy and Governance (iREG) Surveys 2014, 2017 and 2021.

Forthcoming OECD (2021[16]) research will explore some of the behavioural barriers that may be limiting the use of RIAs (and the other regulatory management tools), as well as pose some possible behaviourally-informed solutions that may help close this gap. Barriers may include: limited ability to focus attention on using RIA effectively, beliefs or motivations that guide users in certain directions, require assistance in making the right choice regarding the type of RIA to conduct, and determination to continuing using the tool effectively over time. A number of behaviourally-informed solutions are identified based on well-established insights, including the use of reminders, default settings, committing to implementing certain actions, diversifying teams, and reframing perceptions around the use of the tool. Future research intends to explore these barriers and solutions in real-world regulatory governance settings to demonstrate what could work in practice.

There is scope to improve the options considered in RIA

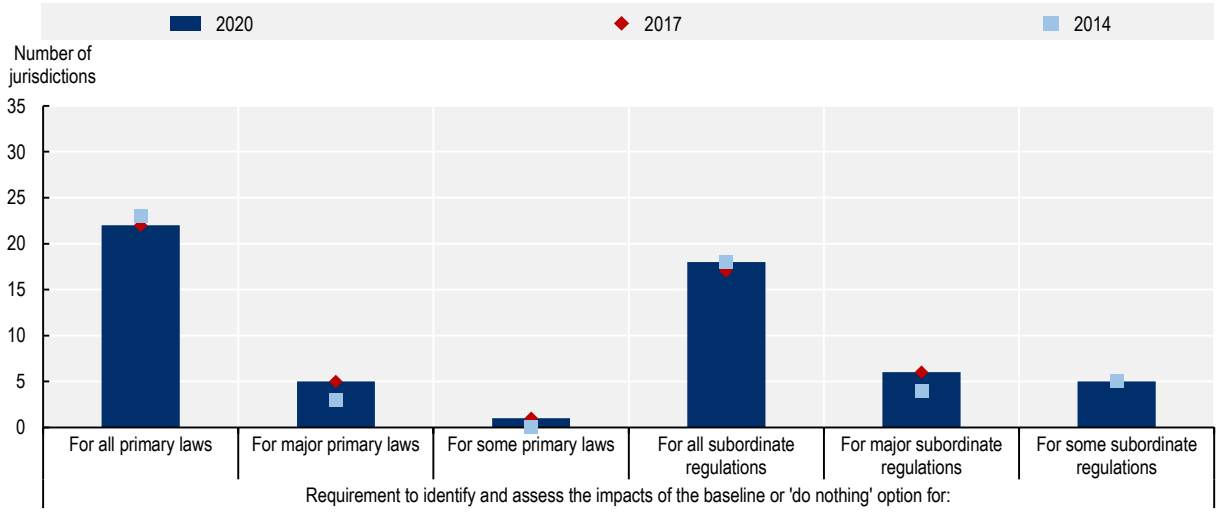
Considering all feasible options when potentially embarking on regulating is crucial to ensure that the broadest possible range of alternatives are genuinely considered by policy makers. This was recognised in the *OECD 2012 Recommendation of Regulatory Policy and Governance* (OECD, 2012[1]): "*Ex ante* assessment policies should include a consideration of alternative ways of addressing the public policy objectives, including regulatory and non-regulatory alternatives to identify and select the most appropriate instrument, or mix of instruments to achieve policy goals. The no action option or baseline scenario should always be considered."

The best practice principles complement the *Recommendation* by noting that RIA more generally is an iterative process (OECD, 2020[15]). This is certainly the case for the consideration of alternative options, as options are gradually ruled out as more information on their potential impacts becomes available; or where stakeholders identify that certain options proposed are not feasible – and also the possibility that stakeholders may raise alternative options not considered by policy makers. Developing RIA in co-operation with relevant stakeholders can help to improve policy design. In 2020 the Australian Government announced its intention to raise the cyber security and resilience of its critical infrastructure system. The RIA highlighted the critical infrastructure assets, possible positive security obligations for critical infrastructure owners and operators, and mandatory cyber incident reporting. Over 3 000 people shared their views and more than 350 submissions were received. As the RIA progressed, significant

refinements were made to the policy as a result of the consultation, adding for example clarity to the definitions of critical infrastructure sectors, and extended timeframes for reporting cyber security incidents (Australia, 2020[17]).

Notwithstanding the *Recommendation*, today four OECD members do not require their regulators to consider the no action or baseline scenario, with an additional five that only require a baseline assessment for some subordinate regulations (Figure 2.10).

Figure 2.10. The no action or baseline option is not systematically required across OECD members



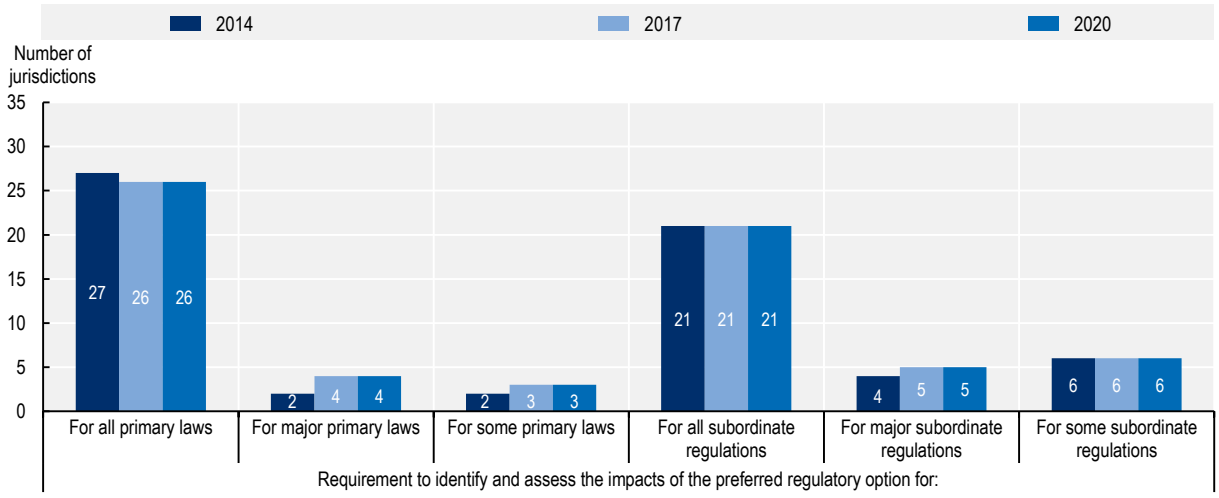
Note: Data are based on 34 OECD member countries and the European Union.
Source: Indicators of Regulatory Policy and Governance (iREG) Surveys 2014, 2017 and 2021.

Failing to consider the no action or baseline scenario represents a significant weakness in the approach to RIA. First, it means that any alternatives cannot be meaningfully compared as the starting point (i.e. when the regulatory intervention began) is unknown or uncertain. Second, it creates little incentive to capture accurate data and changes in market participants' behaviour because the starting point is unknown (both of which are crucial for monitoring and evaluation). Third, it means that evaluating government intervention is more difficult – policy makers will not know whether a regulation has succeeded or failed in achieving its goals as there is no counterfactual to compare against (see *ex post* evaluation section below). Fourth, it undermines one of the key benefits that the RIA process provides – an evidenced-based assessment of a complete range of feasible options presented to decision makers on a common basis.

Since 2014, around 85% of OECD members have had systematic requirements in place to identify and assess the impacts of the preferred regulatory option (Figure 2.11). The results have remained relatively stable and help to ensure that decision makers are aware and informed of the likely implications that will flow from the preferred regulatory approach.

Alternative regulatory options for primary laws are required to be systematically identified and assessed in around 80% of OECD members, with little change since 2014. This suggests that decision makers generally benefit from having information about alternative regulatory paths that could be taken to solve the policy problem at hand, albeit RIAs are slightly less likely to contain this information when compared with the preferred regulatory option.

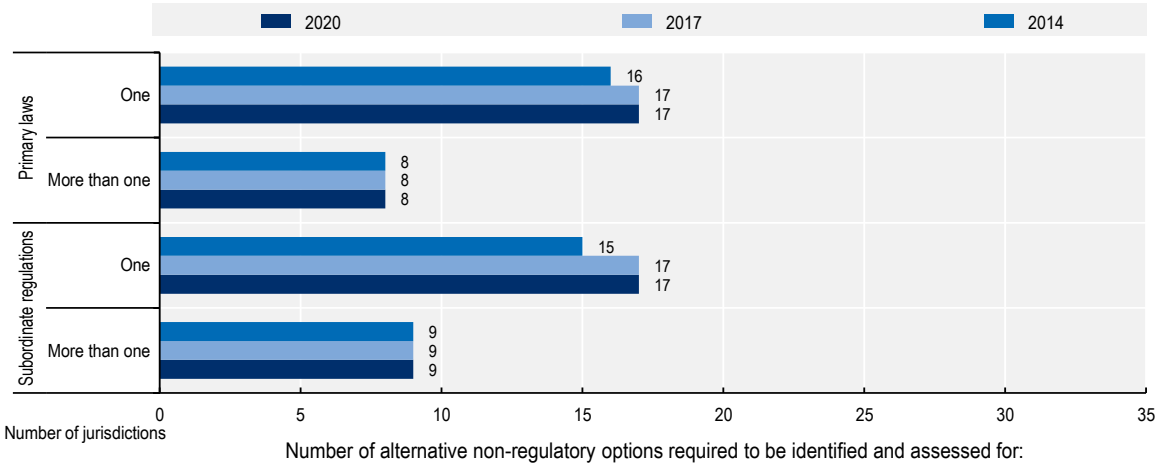
Figure 2.11. The vast majority of OECD members systematically require the impacts of the preferred regulatory option to be identified and assessed



Note: Data are based on 34 OECD member countries and the European Union.
Source: Indicators of Regulatory Policy and Governance (iREG) Surveys 2014, 2017 and 2021.

Results from the Indicators of Regulatory Policy and Governance Survey suggest decision makers do not have the same quality of information at their disposal when making decisions about whether to regulate or whether a non-regulatory approach may be more appropriate. Alternative non-regulatory options are required to be identified and assessed substantially less than regulatory options. Around 70% of OECD members for primary laws – and just over half for subordinate regulations – have a requirement that proposals systematically identify and assess the impact of alternative non-regulatory options. Furthermore, where non-regulatory options are considered, results from the iREG survey indicate that generally there is only one non-regulatory option considered by policy makers (Figure 2.12).

Figure 2.12. Where done, generally only one non-regulatory option is considered



Note: Data are based on 34 OECD member countries and the European Union.
Source: Indicators of Regulatory Policy and Governance (iREG) Surveys 2014, 2017 and 2021.

The European Commission refined its consideration of baseline and regulatory options during the COVID-19 pandemic: Wherever the crisis might have had a significant bearing on the sector or policy area a regulatory initiative addresses, the Commission considered these effects in the baseline as well as in the

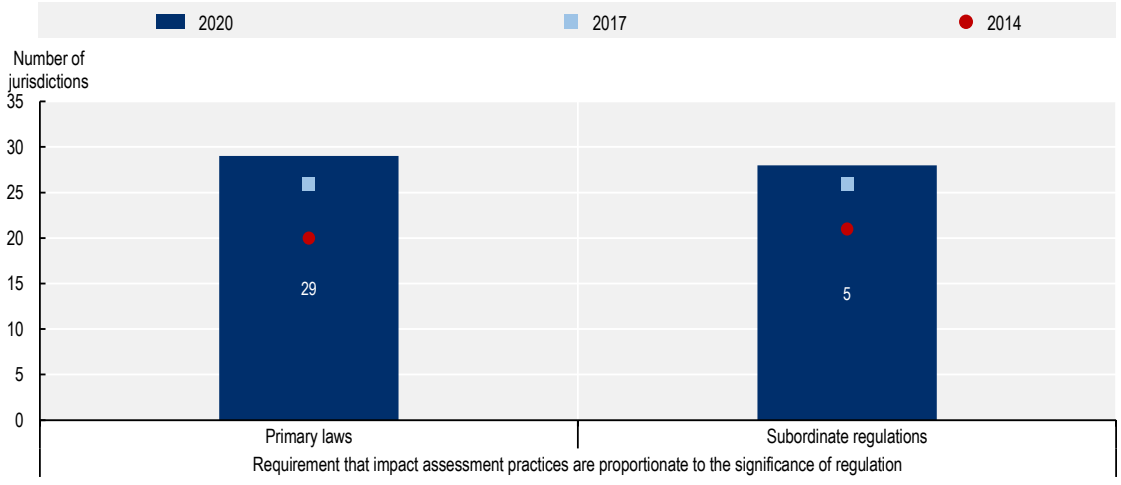
preferred regulatory options. Any impact assessment would need to compare the impacts of a policy option against a regular baseline, not taking into account the pandemic, as well as a refined baseline, which considers the implications of the COVID-19 pandemic, such as economic slowdown or structural and behavioural change.

Overall the results suggest that decision makers are not always informed of the current situation (or baseline) before regulating, and that regulatory options are more likely to have been identified and assessed than non-regulatory ones. In turn, this risks prejudging that intervention is warranted and that it potentially be through regulatory means.

RIAs are becoming increasingly proportionate to the significance of impacts

An increasing number of OECD members are introducing requirements for RIA to be proportionate to the significance of anticipated impacts (see Figure 2.13), thereby following the *Best Practice Principles on Regulatory Impact Assessment* (OECD, 2020[15]) (see Box 2.7). Whilst the majority of OECD members necessitate RIAs to be proportionate to the size of the anticipated impacts, these obligations have been introduced at a lower rate than between 2014 and 2017 and there currently remains approximately 15% of OECD members that do not have any proportionality requirement.

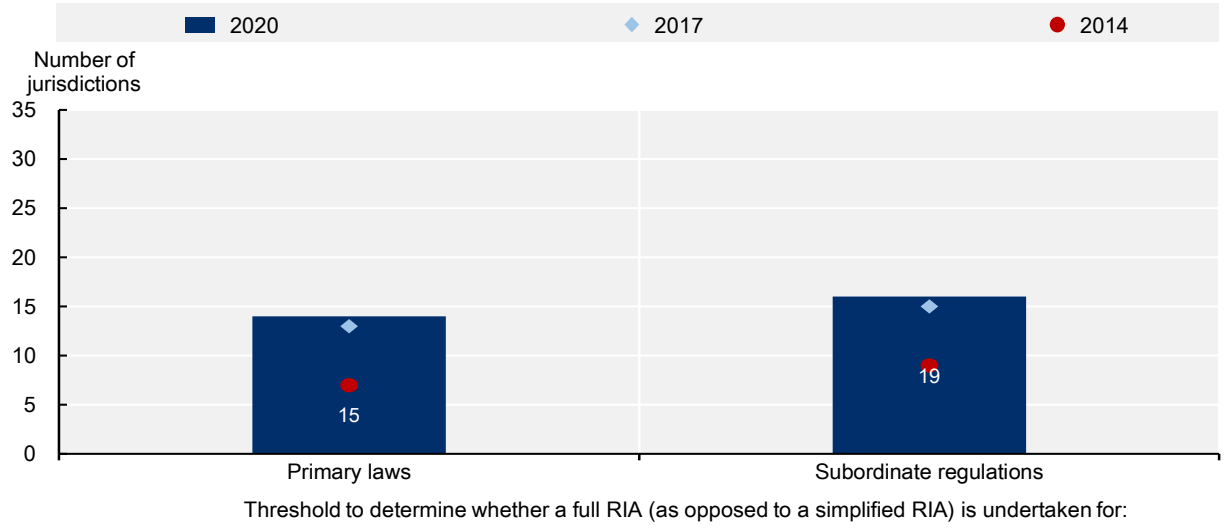
Figure 2.13. More OECD members have introduced requirements for RIAs to be proportionate to the significance of anticipated impacts



Note: Data are based on 34 OECD member countries and the European Union.
Source: Indicators of Regulatory Policy and Governance (iREG) Surveys 2014, 2017 and 2021.

A fifth of OECD members still use a threshold test to determine whether a RIA is undertaken at all, demonstrating that an increasing number of regulatory proposals undergo at least some level of impact analysis. A common method across OECD members for establishing proportionate *ex ante* analysis is to introduce a threshold test, to determine whether a regulatory proposal warrants more in-depth RIA. In parallel with the proportionality requirement, the use of threshold test has increased across OECD members, though at a lower rate than before (see Figure 2.14). Whilst the *Best Practice Principles on Regulatory Impact Assessment* (OECD, 2020[15]) cite various alternatives for distinguishing which regulatory proposals should go through a certain level of analysis, the most common method used amongst OECD members is a threshold that is expressed both in quantitative and qualitative terms, with only one OECD member using a solely quantitative threshold test (Box 2.8).

Figure 2.14. There is an increasing use of threshold tests to determine the depth of RIA



Note: Data are based on 34 OECD member countries and the European Union.
Source: Indicators of Regulatory Policy and Governance (iREG) Surveys 2014, 2017 and 2021.

Box 2.8. Annex to the OECD Best Practice Principles on Regulatory Impact Assessment: A closer look at proportionality and threshold tests for RIA

OECD countries should consider the following, when developing proportionality rules or threshold tests:

1. Determining the scope of RIA should start at an early stage when policy makers are evaluating the problem – potentially even before considering the need for intervention – and identifying regulatory and non-regulatory alternatives. Preferably, this process should start already in the phase of legislative planning.
2. An oversight body should assess whether the regulator has characterised the problem correctly, including its magnitude, when the regulator still has the flexibility in formulating a regulation or policy. The earlier policy makers understand the magnitude of the problem, the better the government may target resources to developing solutions.
3. During the early stage of RIA, policy makers should begin to introduce an economic rationale and data to determine the scope of the issue. This does not mean an in-depth analysis at an early stage (e.g. a well-developed cost-benefit analysis). Policy makers should be broadly scanning an issue, before undertaking an in-depth analysis.
4. The time and resources devoted to the development of regulation and its analysis should relate to the size of the impacts, the size and structure of the economy, the impacts per capita, the flexibility of the policy, and the relative resources of the government.
5. If a country chooses to use quantified thresholds for RIA, they should be inclusive and base the thresholds on the size of impacts across society, rather than focusing on any specific sector or stakeholder group. There may also be a risk in using one single value threshold that captures impacts across society. One stakeholder group may be disproportionately affected but the total impacts are below the threshold, so countries may wish to consider a threshold that also incorporates a per capita or stakeholder threshold.

6. Regulations should only be exempt from completing the RIA process in genuinely unforeseen emergencies, when a significant delay could objectively put the wellbeing of citizens at risk. Oversight bodies should be very critical of ministries that overuse such exemptions. Ministries should also be required to conduct an *ex post* evaluation to ensure that the regulation was effective after a defined period of time.
7. Regulations with limited policy options or flexibility (e.g. transposition of EU directives or supranational laws) might have a less rigorous process. When fewer policy options or instruments are available, even if the impacts may be quite significant, policy makers have less flexibility to improve a policy at this stage. Despite this, governments should be mindful that EU directives or other supranational instruments might still have a degree of flexibility in their implementation.
8. The time and resources for regulation development and analysis should also scale with the capacities of the government. It is important that governments continuously build the expertise of policy makers in RIA and stakeholder engagement to make analysis more effective. Governments must build capacities in ministries before they can require significant levels of analysis.

Source: (OECD, 2020[18]).

Box 2.9. SME test in OECD countries: Impact of regulations on SMEs

Small and medium-sized enterprises (SMEs) are the most common form of business in most OECD countries, as they account for nearly 99% of existing firms. These firms play a key role in the economy, societal well-being and prosperity at the local and global level. Navigating the legal environment and complying with regulations tend to be cumbersome for SMEs. The 2012 Recommendation acknowledged these specific circumstances for SMEs and indicated that in designing regulations, governments need to be aware of the incidence of regulations on businesses and the disproportionate impacts they can have on small to medium-sized enterprises and micro businesses (OECD, 2012[1]).

In 2020, the OECD undertook a comparative study that examined to what extent and how OECD countries were assessing the impact of regulations on SMEs. In general, the study found that whilst there was no homogenous application of the SME Test in OECD countries, there were four common elements that could be assumed as forming the parameters of an SME Test in some of those countries. These four elements are as follows:

- *Identification of affected groups:* To identify whether SMEs are among the potentially affected population, and if so which type of SMEs might be affected (e.g., by size, geographical location, sector, etc.).
- *Consultation with relevant stakeholders:* To engage with different types of SMEs, considering their heterogeneity, in order to understand how these groups might be affected differently by proposed or existing regulations.
- *Identification and assessment of the impact of regulation on SMEs:* To assess the distribution of costs, benefits and other impacts of the proposal or existing regulations (competition, innovation, finance, etc.), with respect to previously identified SMEs groups.

- *Identification of alternative or mitigating measures:* When deemed necessary, to evaluate and propose alternative regulatory or non-regulatory measures to be applied to safeguard SMEs, including total or partial exemption from complying with the proposed regulation.

SME Test by phases: The European Commission and some countries such as Italy and Sweden conduct their SME Test following the previously listed steps in the order listed.

Exemptions first: Alternatively, a divergent approach in how the SME Test is applied was observed in cases such as the UK. In the UK, an impact assessment on SMEs is conducted through the British Small and Micro Business Assessment (SaMBA). Unlike in most other countries, whereby the SME Test begins by identifying the affected group and then assessing for impacts, the first step for the UK SaMBA is to determine whether SMEs can be exempted from complying with the proposed regulation. Only when an exemption is not possible must potential impacts, positive and negative, be assessed. In case there are disproportionate negative impacts to SMEs, policy makers must either propose mitigating measures or explain why these measures are not possible.

Interactive SME test: Slovenia has an interactive element to their SME test. There is an online SME test on the E-democracy portal, which allows policy makers and also the general public to quantify how their alternative regulatory proposals could impact SMEs. This enables the public to present alternative proposals to those already presented by policy makers that, as shown by the previously conducted SME test, might improve SMEs livelihood or reduce negative impacts to this group.

SME test based on consultation: In the Netherlands the test takes the form of a panel discussion with individual SME entrepreneurs and SMEs representatives, to which small businesses in particular are invited. During these discussions, workability and feasibility of the legislative proposal is mapped out and it is also examined how these proposals might affect SMEs' regulatory pressure.

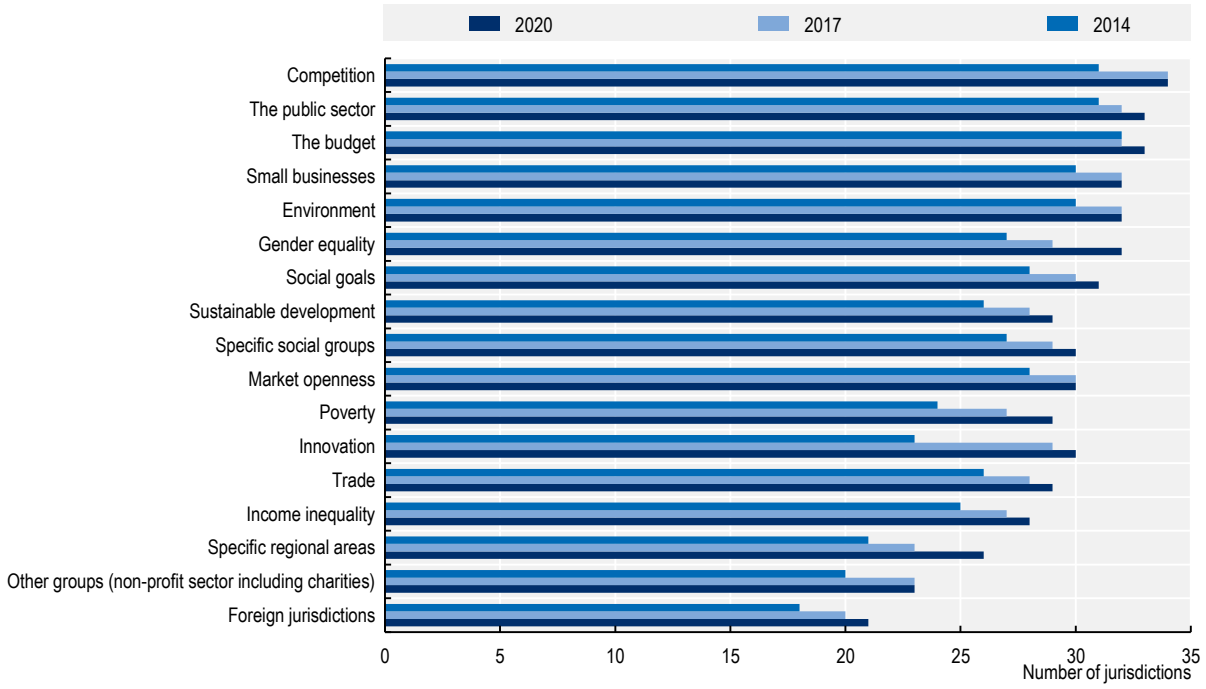
Note: Data are based on 23 OECD members.
Source: (OECD, forthcoming[19]).

An increasing range of impacts are assessed in RIA, but work remains to be done

Policy makers from OECD members are increasingly required to assess the impacts of regulatory proposals on a range of factors (see Figure 2.15). There continues to be a strong focus on analysing the economic impacts of regulatory proposals, with the effects on competition, public administration, and the budget being the most commonly required regulatory assessments. The regulatory impacts on micro, small and medium-sized companies are also commonly assessed amongst OECD members, although policy makers in OECD members have divergent approaches to implementing the SME Test (see Box 2.9).

Whilst they remain less developed than economic factors, policy makers from the OECD members are increasingly required to assess the social impacts of regulations. In particular, it is now mandatory to assess the impacts of regulations on poverty, on gender equality, and on the environment in 29, 32, and 32 OECD members, respectively. For example, the assessment of non-economic regulatory impacts – i.e. impact on gender equality, poverty, and on people with disabilities – is an integral and mandatory component of the RIA process in Portugal. There has also been a strong increase in the number of members reviewing the effects of regulation on specific regional areas, although the requirement to analyse regulatory impacts on foreign jurisdictions remains the lowest amongst all assessments. The magnitude of impacts on foreign jurisdictions will continue to grow in an ever increasingly interconnected world, potentially resulting in significant impacts (both positive and negative) being omitted from RIAs. By working together governments can better understand the potential extraterritorial impacts of their regulatory proposals. The topic of international regulatory co-operation is discussed in Chapter 4.

Figure 2.15. OECD regulators are assessing regulatory impacts on an increasing number of factors



Note: Data are based on 34 OECD member countries and the European Union.
Source: Indicators of Regulatory Policy and Governance (iREG) Surveys 2014, 2017 and 2021.

Results from this edition of the *Regulatory Policy Outlook* and from previous ones (OECD, 2015[3]; OECD, 2018[20]) have demonstrated that policy makers continue to be increasingly aware of the impacts that regulations can have. Of the impacts featured in Figure 2.15, the only area that is nearly universally covered by OECD members is the requirement to consider competition impacts. This reflects the central importance of competition to market economies (OECD, 2019[21]), however it does not necessarily relate to the concept of competitiveness (Box 2.10) – an area that will take on increased prominence in the years to come as the global economy begins to recover from the COVID-19 pandemic.

The result of OECD research (2021[22]) demonstrates that whilst many OECD countries assess some of the components of competitiveness as part of the RIA analysis, such as innovation and trade, these impacts are often assessed disjointedly and the second-order effects might not always be captured. For example, the direct regulatory costs to SMEs and the impact on SME's cost competitiveness are often included in the SME test. RIAs, however, often neglect looking at the second-order effects, such as the way regulations may impact SMEs' ability to access innovation or their capacity to enter international markets, which are both key drivers of competitiveness. This suggests that policy makers therefore do not assess the impacts on competitiveness in a holistic manner and therefore produce inaccurate cost-benefit analysis that underestimates the true cost of regulatory intervention. As a result, this artificially improves the results of the RIA and provides decision makers with inaccurate information.

The externalities of a regulatory proposal can be aggravated at a time of economic and sanitary crises, as demonstrated by the COVID-19 pandemic whose impacts have been uneven both within (impact on SMEs vs. larger firms) and across sectors (e.g. tourism vs. education), with spillovers affecting the economy as a whole. Policy makers may have to react quickly to address emerging issues and may be unable to fully identify the impacts of regulatory proposals. In recovering from the COVID-19 pandemic, countries across the globe might look beyond productivity and consider improving their competitiveness as a whole. Policy makers should attempt to assess how policy proposals affect the cost of the relevant factor (e.g.

compliance, research and development, trade) as they currently do, but also how it affects the ability to attract economic activity as well as the capacity of firms to capture any competitive advantages vis-à-vis its current and potential competitors.

Box 2.10. Conceptualising competitiveness is difficult, but approaches to measure impacts on it do exist

Competitiveness is a multidimensional concept that is difficult to define and to conceptualise, yet is often used as a catch-all term to refer to productivity and growth. Whilst competitiveness is a concept that is regularly mentioned in the literature, little is done in practice to assess how it can be affected by regulatory proposals, even though policy makers would have much to gain from considering it more systematically. The impacts of laws and regulations on competitiveness have strong implications for OECD economies, as they can lead to unforeseen negative externalities that can spill over across other areas of the economy and thus to considerable regulatory costs for businesses and citizens.

Competitiveness can best be analysed through three interlinked components: cost competitiveness, innovation, and international competitiveness. OECD research (2021[22]) explored in detail how each of the three components can be affected by regulations and the various mechanisms at play, noting particularly how an impact on one component also indirectly affects the other ones. For example, regulations often impose a range of direct costs on SMEs (which are commonly required to be assessed in OECD members' RIA procedures) that alter SME's cost competitiveness. The same regulation may however also affect other aspects of SMEs' competitiveness, such as their ability to access financing or their difficulty in entering international markets, which may be neglected from the RIA.

There is scope for a more comprehensive and holistic assessment of the impacts of regulations on competitiveness, by recognising that competitiveness goes beyond productivity and by considering more systematically the other components of the concept.

Source: (Davidson, Kauffmann and de Liedekerke, 2021[22]).

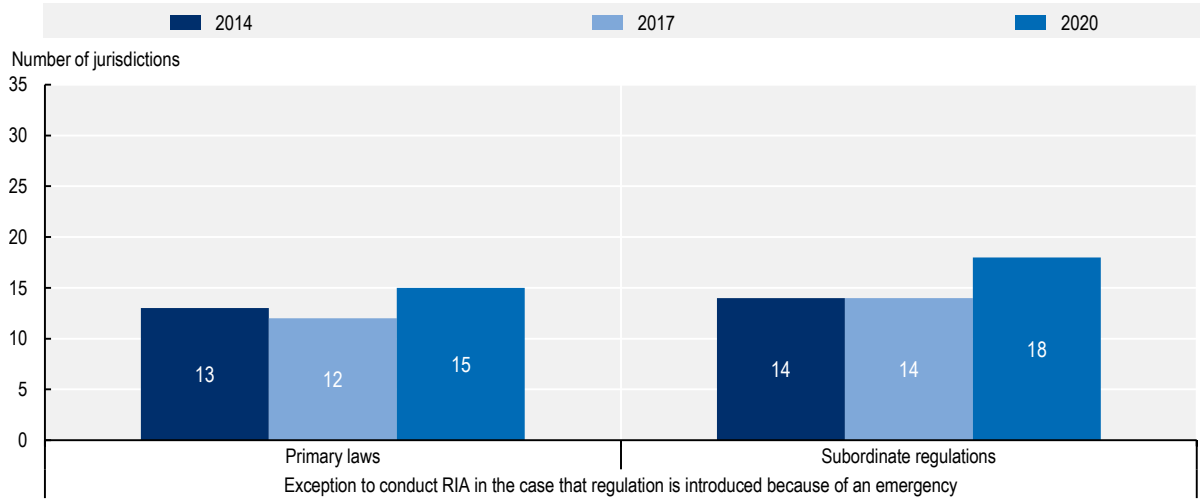
RIA in times of crises

In emergency situations it may be necessary to adjust the level of impact assessment undertaken. This is a pragmatic realisation that collecting information, engaging with stakeholders, and assessing impacts takes time and resources – which may not be available or may detract from more important issues in an emergency. That said, some points of caution should be noted. Firstly, this should not be viewed as an opportunity to avoid considering impacts until the end of the policy making process – the events need to have been genuinely unforeseeable. Secondly, there may be opportunities to undertake *some* impact assessment, for example a focus (perhaps even only qualitatively) on the immediate anticipated effects of the policy. For instance Canada adjusted its RIA requirements for COVID-related proposals. Proposals could be developed using adjusted analytical requirements, including cost-benefit analysis and the small business lens analysis. These could be based on qualitative and quantitative data, but the requirement to monetise impacts was relaxed. In addition, proposals could be recommended for exclusion from the one-for-one rule. Any information that can be reasonably collected *ex ante* can firstly help to inform better decision making, and secondly can be used as a starting basis for later reviews of the policy (see *ex post* evaluation section below).

Nearly half of OECD members now have exceptions to conducting RIAs where regulations are introduced in response to an emergency (see Figure 2.16), and several members have used this mechanism to bypass their RIA requirements for some of the regulations introduced in response to the COVID-19

pandemic. A further four OECD members (Chile, Denmark, New Zealand, and Portugal) have introduced the exception to conducting RIA in case of emergency in their regulatory practices in the past three years, although in most cases this mechanism was introduced before the COVID-19 pandemic. A range of other emergency-based regulatory policy measures have been introduced by OECD members (Box 2.11).

Figure 2.16. More OECD members do not require RIA where regulations are introduced in response to an emergency



Note: Data are based on 34 OECD member countries and the European Union.
Source: Indicators of Regulatory Policy and Governance (iREG) Surveys 2014, 2017 and 2021.

Box 2.11. The COVID-19 pandemic has resulted in a raft of regulatory policy changes relating to RIA

Some OECD members introduced changed RIA procedures…

- In **Belgium**, no impact assessment was conducted for COVID-related regulatory proposals and the oversight body, the Impact Assessment Board, was not consulted on such proposals.
- The **United Kingdom** provided a summary of impacts document in support of its initial response to the COVID-19 pandemic.
- COVID-related regulations passed in **Slovenia** were not subject to an *ex ante* impact assessment, however there is a requirement to undertake impact assessment after a period of two years.

… and some members changed institutions

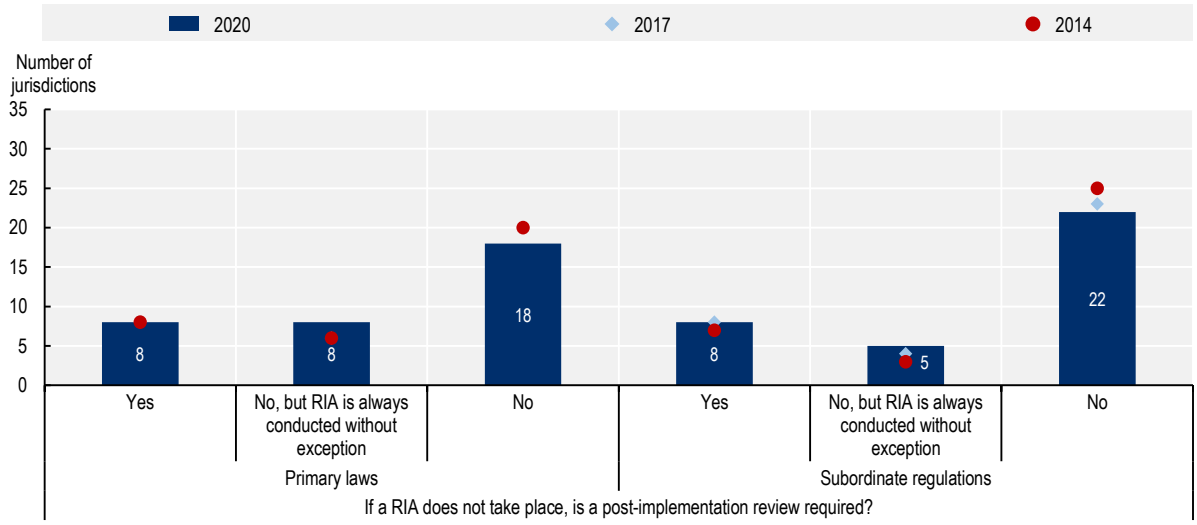
- **Australia** created the National COVID-19 Commission Advisory Board to provide timely and direct advice from a business perspective to support the Government's management of COVID-19 and its plans for economic recovery.
- The **Czech Republic** restored the National Economic Council (NERV), a body which had been originally established to assist the government in putting forward economic reform measures in the aftermath of the global financial crisis. The NERV collaborated in creating the Czech Recovery and Resilience Plan with the Ministry of Industry and Trade, which has six focus areas including a digital transition; research, development, and innovation; and institution, regulation and business support in response to the COVID-19 pandemic.

Source: Indicators of Regulatory Policy and Governance Survey, 2021; National COVID-19 Commission Advisory Board (Australia) https://www.pmc.gov.au/ncc; Report on the Implementation of the National Reform Programme of the Czech Republic 2020 https://www.vlada.cz/assets/evropske-zalezitosti/aktualne/Zprava-o-realizaci-NPR-2019.pdf; Department of Health & Social Care (UK), Impact assessment – Coronavirus bill: summary of impacts https://www.gov.uk/government/publications/coronavirus-bill-summary-of-impacts/coronavirus-bill-summary-of-impacts.

The transparency surrounding the decisions to except proposals from conducting RIA remains blurred, with only a minority of OECD members currently publishing the decision that RIA will not be conducted where it ought to have been. There also remains nearly 60% of OECD members in which no body is responsible for reviewing the decision made by officials about whether a RIA is required. In effect, this suggests that a majority of OECD members can use the exception mechanisms to bypass RIA with little scrutiny on whether this decision is appropriate or proportionate to the regulatory proposal at hand.

Few countries have reported having a requirement to undertake a post-implementation review where a regulatory proposal was excepted from undertaking a RIA (Figure 2.17). Given the relatively low proportion of OECD members that have PIR requirements in place, it seems that countries are generally more likely to adopt an ad hoc approach to consequences for regulations that bypass *ex ante* impact assessment (and scrutiny). Irrespective of whether consequences are formalised, it is expected that there will be a significant amount of forthcoming policy reviews (see *ex post* evaluation section below).

Figure 2.17. No change in the requirement to undertake post-implementation reviews if RIA does not take place



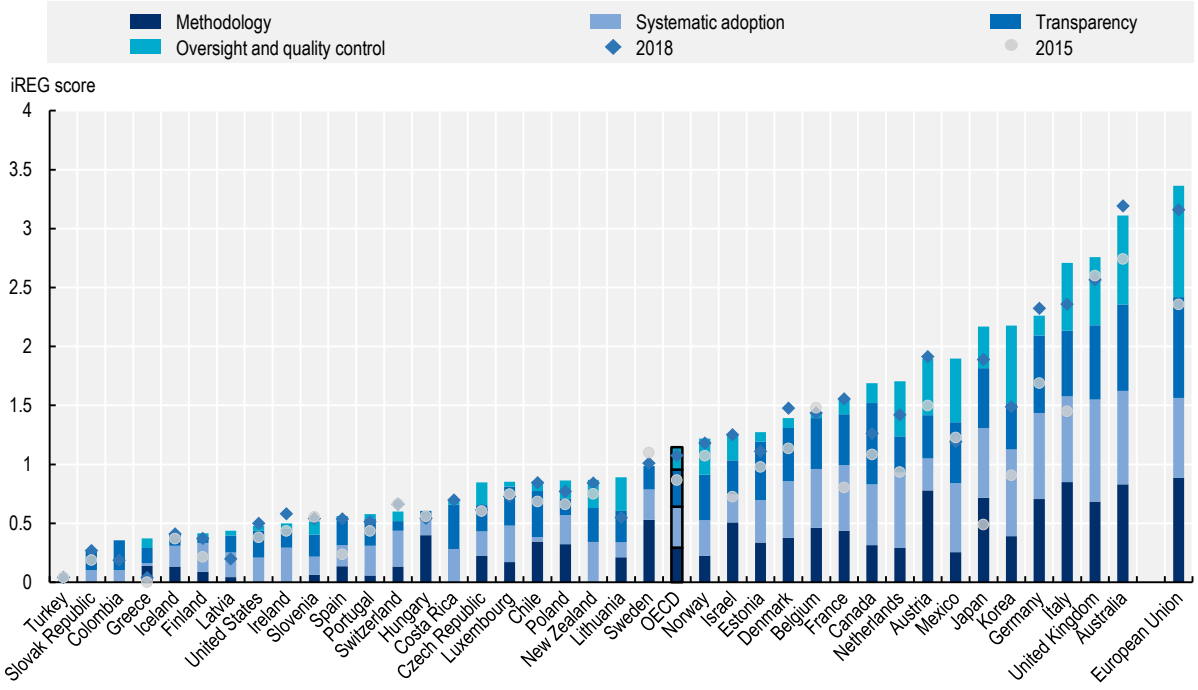
Note: Data are based on 34 OECD member countries and the European Union.
Source: Indicators of Regulatory Policy and Governance (iREG) Surveys 2014, 2017 and 2021.

Ex post evaluation

Composite indicators and summary results

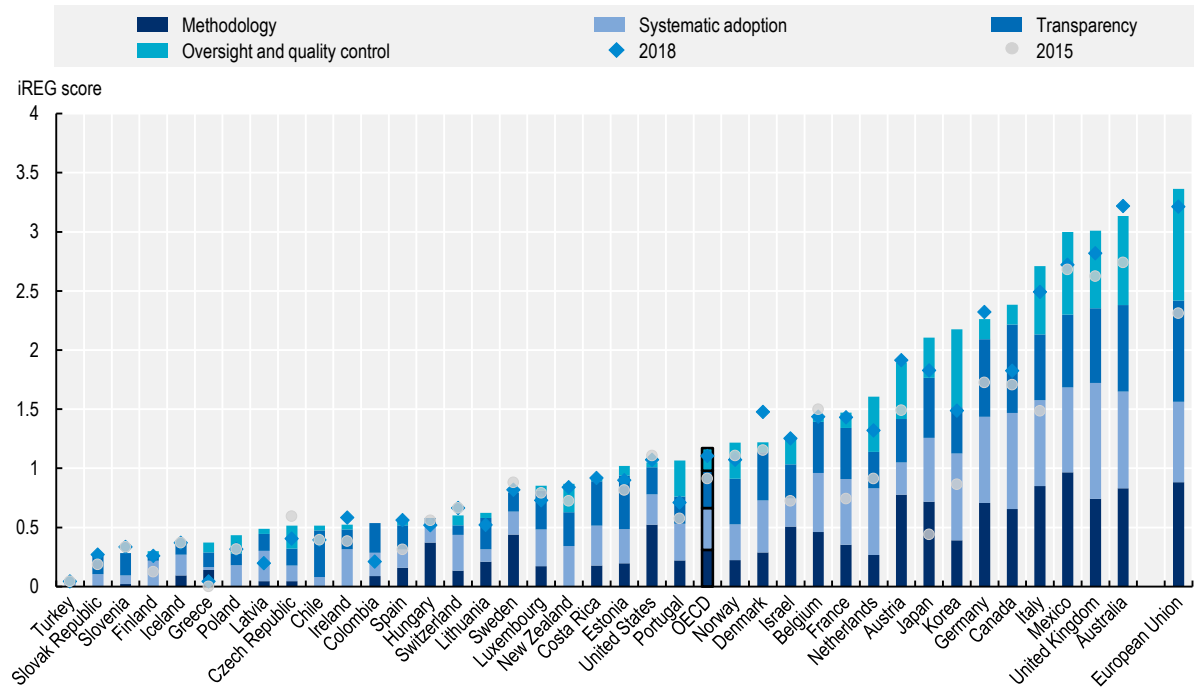
OECD members have improved their *ex post* evaluations since 2017 for both primary and subordinate regulations. The largest improvements have been in transparency of *ex post* evaluations. Members have invested in dedicated websites for the public to make recommendations to modify and provide feedback on existing regulations, and in some countries stakeholders are actively engaged when *ex post* evaluations are conducted. The number of oversight bodies scrutinising *ex post* evaluations has increased since 2017. These bodies provide advice and guidance on conducting *ex post* evaluations, and assist officials to conduct them.

Figure 2.18. Composite indicators: *Ex post* evaluation for primary laws, 2021



Notes: Data for 2014 is based on the 34 countries that were OECD members in 2014 and the European Union. Data for 2017 and 2021 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, 2017 and 2021.

Figure 2.19. Composite indicators: *Ex post* evaluation for subordinate regulations, 2021



Notes: Data for 2014 is based on the 34 countries that were OECD members in 2014 and the European Union. Data for 2017 and 2021 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, 2017 and 2021.

Countries which have had substantive changes to their *ex post* evaluation systems over the last years include Canada, Greece, Italy, Japan, Korea, Latvia, Lithuania, Mexico, Netherlands, Portugal and the European Union.

- Canada recently updated its *Cabinet Directive on Regulation*; it now mandates government departments and agencies to conduct *ex post* evaluation on all subordinate regulations and it provides guidance and training to policy makers on how to carry them out.
- Greece introduced Law 4622 in 2019. Amongst other topics, it made periodic *ex post* evaluations mandatory for all primary laws and for major subordinate regulations, and it now requires all *ex post* evaluations to contain an assessment of costs and benefits. Evaluation techniques and oversight functions related to *ex post* evaluations were also strengthened.
- In Italy, new non-binding guidance on *ex post* evaluation was issued in 2018. Initial steps have been taken to plan *ex post* evaluations when preparing RIAs for major legislation. Ministries publish a two-year plan of regulations to be evaluated.
- In Japan, the number of *ex post* evaluations has increased for both primary laws and subordinate regulations since 2017. *Ex post* evaluations are automatically triggered if a RIA was conducted during policy development.
- In Korea, *ex post* evaluation is mandatory for all regulations developed by the executive and central ministries, which are required to outline the intended evaluation plan as part of each RIA. Packaged reviews of *ex post* evaluations are now subject to quality control.
- As part of broader reforms in Latvia, *ex post* evaluations are now required for some subordinate regulations and an evaluation of all policy documents conforming to the SDGs was recently conducted.
- Lithuania has introduced some general requirements to conduct monitoring and *ex post* reviews of existing primary laws and in 2020, it strengthened the regulatory oversight function and transparency of *ex post* evaluations.
- Mexico introduced a new General Law for Better Regulation in 2018, which established new provisions to carry out *ex post* assessment of regulations that generate compliance costs. Mexico's oversight body is now in charge of reviewing these *ex post* evaluations.
- The Netherlands saw an improvement in oversight and quality control for periodic *ex post* evaluation of the effectiveness and efficiency of regulations. The Budget Inspectorate is now responsible for reviewing the quality of *ex post* evaluations and it has developed a toolbox with guidance for officials conducting these evaluations.
- Portugal's main regulatory oversight body was created in 2017 and has taken the role of co-ordinating *ex post* evaluations of subordinate regulations across the public administration and assisting officials in conducting them. Following the COVID-19 pandemic, Portugal introduced sunsetting clauses for some regulations.
- The European Union's *ex post* evaluation system combines systematic evaluations of individual regulations with comprehensive "fitness checks" of policy sectors, inviting comment on evaluation roadmaps. The EU's regulatory oversight body provides summary ratings on evaluations that are made publicly available along with compliance statistics.

Evaluate, don't just regulate

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; acknowledging that the original environment justifying the regulation may have changed, and as an opportunity to see how regulations have actually worked in practice.

Given the size of the regulatory stock, there are numerous opportunities to improve its functioning, thus increasing the benefits regulations provide, and at the same time ensuring that regulatory costs are kept to the minimum necessary. 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 (OECD, 2020[23]). In addition, the evaluation of regulatory impacts *ex ante* is often conducted under the hypothesis of a static economic equilibrium, whereas in practice, regulations interact together with more complex dynamics. In this way, *ex post* evaluations complete the regulatory cycle that begins with *ex ante* assessment of proposals and proceeds to implementation and administration.

The *2012 Recommendation* 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." The OECD publication *Best Practice Principles on Reviewing the Regulatory Stock* (OECD, 2020[24]), builds upon the *2012 Recommendation* (OECD, 2012[1]) and helps elucidate key aspects of *ex post* evaluation (Box 2.12).

Box 2.12. OECD Best Practice Principles for reviewing the stock of regulation

The overarching principles for *ex post* evaluations are that:

- Regulatory policy frameworks should explicitly incorporate *ex post* reviews as an integral and permanent part of the regulatory cycle
- A sound system for the *ex post* review of regulation would ensure comprehensive coverage of the regulatory stock over time, while "quality controlling" key reviews and monitoring the operations of the system as a whole
- Reviews should include an evidence-based assessment of the actual outcomes from regulations against their rationales and objectives, note any lessons and make recommendations to address any performance deficiencies.

Specific principles relate to the following:

- System governance
- Broad approaches to reviews: programmed reviews; ad hoc reviews; and ongoing stock management
- Governance of individual reviews
- Key questions to be answered in reviews: appropriateness; effectiveness; efficiency; and alternatives
- Methodologies
- Public consultation
- Prioritisation and sequencing
- Capacity building
- Committed leadership.

Source: (OECD, 2020[24]).

One clear message from the Best Practice Principles is that it is imperative to begin thinking about how regulations ought to be reviewed at the time when they are initially designed, particularly to identify the data that will need to be collected to assess the impacts. Previous findings established that data

considerations are often neglected or not fully incorporated into the design of regulations (OECD, 2018[25]). In turn, this often makes undertaking *ex post* evaluations difficult as the lack of data mean that a counterfactual baseline is not necessarily possible to establish. Separately, a lack of adequate data considerations at the *ex ante* development stage means that the costs of regulations are not fully incorporated into regulatory proposals. Some OECD members have attempted to formalise processes to ensure that *ex post* evaluations are more fully embedded into the regulatory policy cycle (Box 2.13).

Box 2.13. Selected approaches to ensure that *ex post* evaluations are considered at earlier stages in the regulatory policy cycle

New Zealand

In New Zealand, the Public Service Act stipulates five public service principles. One of them is "stewardship", which explicitly includes within its scope the stewardship of all legislation administered within the public service. This "regulatory stewardship" responsibility views regulation (regulatory systems) as a set of national assets that require proactive monitoring, care and maintenance to deliver effectively over time.

Good regulatory stewardship practice includes:

- Monitoring the performance and the state of the regulatory systems and of the regulatory environment, assessing the regulatory system and evaluating whether it is suitable for the regulatory objective and reporting on regulatory systems
- Systematic assessment of risks and impacts of regulations prior to any changes and enabling interested parties to contribute to the design of regulations
- Providing information and support to regulated parties
- Providing training to regulatory personnel.

European Commission

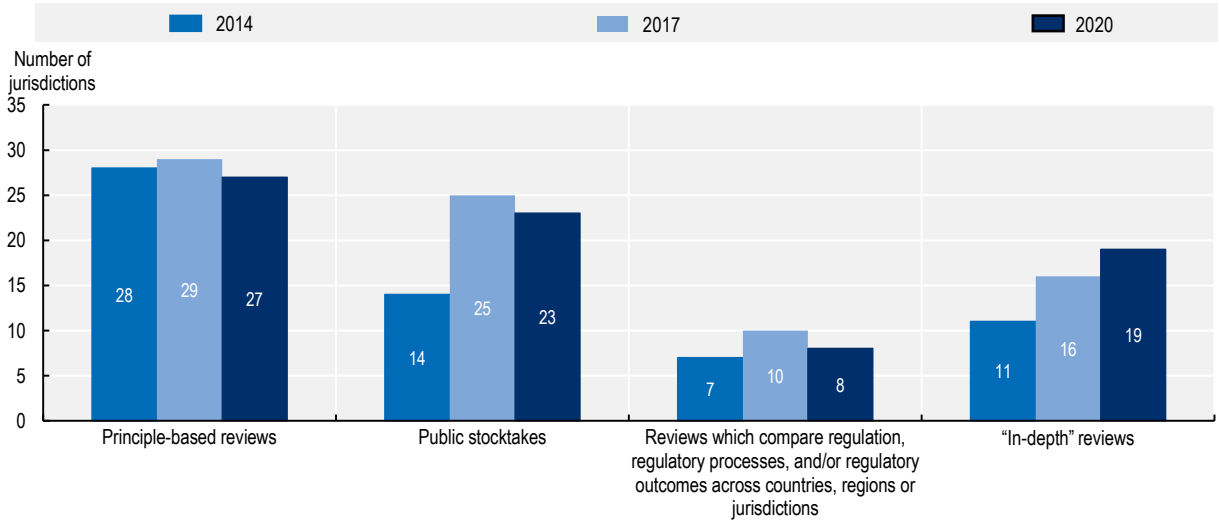
The European Commission's "evaluate first" principle is a key aspect of its regulatory framework. The "evaluate first" principle calls for the review of regulations before any new proposal is made in an area concerned by the foreseen regulation and that timely and relevant recommendations are given to regulators to support their decision-making. In addition, the evaluation of regulations aids the decision-making process by contributing to the design of future policies.

Source: Indicators of Regulatory Policy and Governance Survey 2021.

As the regulatory stock is far larger than the flow of new laws and regulations – *ex post* evaluations remain a missing piece in the OECD member better regulation toolkit. Only one-quarter of OECD members have systematic requirements in place to conduct *ex post* evaluations, with numbers essentially unchanged since 2014. For some of these members the scope of *ex post* evaluation requirements has changed, as was the case for Mexico since amendments to the General Law on Better Regulation were passed in 2018, which now extends beyond technical regulations as was the case previously. Furthermore, it is recognised that for a number of countries *ex post* evaluations is a relatively new area of regulatory management, and since 2014 four additional member countries have introduced some requirement to conduct *ex post* evaluations.

Consistent with previous *Outlooks*, OECD members have undertaken a range of *ex post* evaluations over the past five years. OECD members were most likely to have conducted principle-based reviews across a wide range of areas such as competition, administrative burdens, compliance with international instruments, overlaps between local, regional and federal regulations. Public regulatory stocktaking exercises were undertaken by nearly two-thirds of OECD members in the past five years, with slightly less in-depth reviews (Figure 2.20).

Figure 2.20. A variety of *ex post* evaluations have been undertaken by OECD members in the past five years



Note: Data are based on 34 OECD member countries and the European Union.
Source: Indicators of Regulatory Policy and Governance (iREG) Surveys 2014, 2017 and 2021.

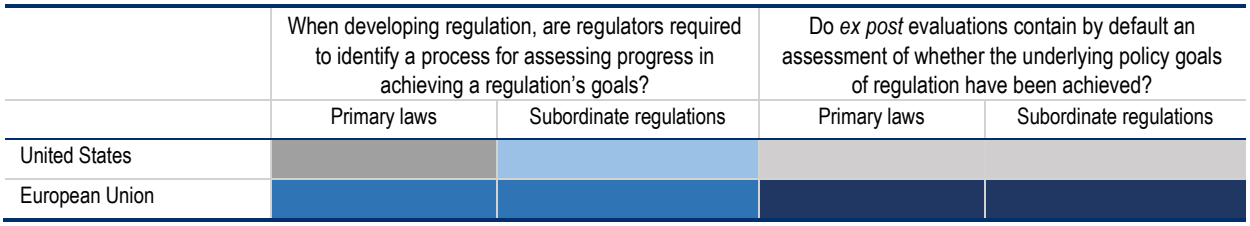
The requirement to review laws and regulations has been formalised by some OECD members through the use of automatic review clauses or sunset clauses, respectively. Despite the opportunity offered by such clauses, they are not always used to the fullest extent, even when governments regulate in areas subject to significant uncertainty at the time laws are made. They could act as an important discipline on lawmakers and at the same time transparently signal to stakeholders that there will be future opportunities to provide input on the retention, amendment, or removal of certain aspects of the regulation. The use of sunset clauses is slightly more prominent than automatic review clauses across OECD members, although both are usually implemented on an *ad hoc* basis. It should be noted that around half of OECD members do not currently utilise automatic review clauses and around 40% do not make use of sunsetting arrangements, with results virtually unchanged from 2014. Both of these clauses are important to ensure that the flow of regulations are subject to some sort of review in order to determine that they remain appropriate over time (OECD, 2020[24]).

As an improvement to the efficient review of regulations, OECD members can make use of flexible review arrangements such as deferring and packaging reviews in order to allow them to more holistically assess the impacts of laws on citizens and businesses. By bundling reviews of regulations in this way, governments can gain a better understanding of the broad system effects of regulation. At the same time, such reviews do offer stakeholders with a potentially superior opportunity to provide vital feedback on the interaction of regulations, while reducing consultation fatigue. In practice however, OECD members have generally undertaken packaged reviews on an *ad hoc* basis only, with more than 40% of members not undertaking packaged reviews at all.

Results from the iREG survey suggests that some OECD members require policy makers to identify a process to achieve a regulation's goals at the time when the regulation is first created. However, when it comes to reviewing regulations via *ex post* evaluations, OECD members are less likely to have requirements in place to assess whether the underlying policy goals were in fact achieved or not (Table 2.2).

Table 2.2. *Ex ante* requirements exist in some OECD members to state how a regulation's goals will be achieved, although *ex post* evaluations do not generally require an assessment of whether this has happened

	When developing regulation, are regulators required to identify a process for assessing progress in achieving a regulation's goals?		Do *ex post* evaluations contain by default an assessment of whether the underlying policy goals of regulation have been achieved?	
	Primary laws	Subordinate regulations	Primary laws	Subordinate regulations
Australia				
Austria				
Belgium				
Canada				
Chile				
Colombia				
Costa Rica				
Czech Republic				
Denmark				
Estonia				
Finland				
France				
Germany				
Greece				
Hungary				
Iceland				
Ireland				
Israel				
Italy				
Japan				
Korea				
Latvia				
Lithuania				
Luxembourg				
Mexico				
Netherlands				
New Zealand				
Norway				
Poland				
Portugal				
Slovak Republic				
Slovenia				
Spain				
Sweden				
Switzerland				
Turkey				
United Kingdom				



For all regulations/All *ex post* evaluations
For major regulations/For *ex post* evaluations regarding major regulations
For some regulations/For some *ex post* evaluations
Never
Not applicable
Not available*

Notes: Data are based on 38 OECD members and the European Union. * Due to a change in the political system during the survey period affecting the processes for developing laws, data for Turkey are not available for stakeholder engagement in developing regulations and RIA for primary laws.
Source: Indicators of Regulatory Policy and Governance (iREG) Survey 2021.

The Best Practice Principles note that it is important for *ex post* evaluations to contain recommendations for improvement as part of decisions around whether regulations remain fit for purpose in their current guise (OECD, 2020[24]). An important aspect of transparency to such *ex post* evaluations is how governments respond to such recommendations. However, in practice this is something that very few OECD members currently do (Box 2.14).

Box 2.14. Responses to recommendations in *ex post* evaluations are infrequent, although improvements to evaluated regulations have been made

The majority of the OECD members report findings and recommendations from *ex post* evaluations to their respective government or parliament. In some cases, responsible ministries are provided with the *ex post* evaluation and consequently, based on this input and their own assessment they decide whether there is the need for regulatory change.

However, only a minority of OECD members' governments provide, in practice, a public response to recommendations made in *ex post* evaluations. One example was the Life Insurance Reform Act which was amended in **Germany** in 2014. In this amendment, the regulation of private insurance companies was changed to a low interest rate environment. In 2018 The Federal Ministry of Finance evaluated the legislative amendment. Their published report documented that the adoption of the Life Insurance Reform Act had helped the insurance industry to outperform market expectations. The *ex post* evaluation report was used to support additional changes that would further support the industry.

Canada, Finland, Norway, and **New Zealand** identified instances where recommendations from *ex post* evaluations had led to tangible improvements. For example, in Canada, an *ex post* evaluation relating to food labelling noted that various changes in food labelling by Health Canada and the Canadian Food Inspection Agency (CFIA) created additional costs and burdens on the industry. In response to the *ex post* evaluation, Health Canada and CFIA developed a plan to co-ordinate timelines for changes of food labelling, and Health Canada established a regulatory sandbox for new and innovative medical products, which also reduced duplicative testing requirements for imported lower risk drug products.

Source: Indicators of Regulatory Policy and Governance Survey 2021.

Specific aspects of ex post *evaluations need improvement*

Having in-house capability in evaluation and review methods is essential, both in order to conduct reviews internally as well as to oversee those commissioned externally (OECD, 2020[24]). In order to assist governments to undertake *ex post* evaluations, a number of OECD members have provided guidance to evaluation teams. In 2014, around 40% of OECD members provided guidance on conducting *ex post* evaluations and now that is around 60%, reflecting the fact that more members are beginning to undertake *ex post* evaluations.

Governments have not materially increased the prevalence of various evaluation techniques and associated training programmes for *ex post* evaluations since 2014, and bespoke training programmes in *ex post* evaluation are only available in eight OECD members (Box 2.15).

Box 2.15. *Ex post* evaluation training programmes are rare across OECD members

Out of the 38 OECD members and European Union, only eight have reportedly made available training programmes on *ex post* evaluation: Australia, Austria, Canada, Colombia, France, Greece, Italy, and the United Kingdom.

The training offered by **Austria** is specific to *ex post* evaluation and to the monitoring tools used for this purpose by the Austrian government. It also covers the evaluation principles as well as information and reporting requirements.

Canada's oversight body, the Treasury Board of Canada Secretariat, has collaborated with the Canada School of Public Service to develop a series of *ex post* evaluation-specific training for senior officials. The series was held over four different seminars that covered a large range of aspects, including planning, conducting, and communicating the results of *ex post* evaluations.

Officials in **France** have access to a training on *ex post* evaluation that enables them to get familiarised with the relevant theories and methodologies. In addition, the French government has organised ad hoc training seminars on *ex post* evaluation of public policies, in partnership with French research institutions.

The training programme in **Greece** covers the better regulation framework as a whole, including *ex post* evaluation. The programme runs over several days and *ex post* evaluation is an integral component of the training, along with other core regulatory management tools such as stakeholder engagement and RIA.

In **Italy**, the National School of the Administration organises the training course "How to build RIA and *ex post* evaluation". The course aims to update managers and officials involved in the development of RIA and *ex post* evaluation. It is an operational and practical training course for policy officials, aiming at practicing techniques of consultation, policy option analysis, assessment of impacts. Lessons are rich in interaction on case studies.

Source: Indicators of Regulatory Policy and Governance Survey 2021.

Unlike *ex ante* impact assessment, *ex post* evaluations are able to observe actual impacts from regulations (OECD, 2020[24]). Assessing impacts in *ex post* evaluations should be done through a broad framework, assessing costs and benefits (OECD, 2020[24]). Since 2014, five more OECD members have begun requiring *ex post* evaluations to assess costs, and an additional six now require an assessment of benefits. This means that 60% of OECD members now have at least some requirement in place to assess both the costs and benefits when conducting *ex post* evaluations.

It is important to have methodologies in place for entities undertaking *ex post* evaluations so as to ensure that observed impacts can be assessed against the original anticipated impacts from the original regulatory development. This also highlights the importance of upfront data collection processes for the purposes of monitoring and evaluation at the *ex ante* policy development stage (OECD, 2018[25]). Since 2014, few changes were observed in this area, whether countries assess if actual impacts are in line with those anticipated, or whether they assess if regulations have had any unintended consequences. Since 2014, there has been a slight increase in OECD members undertaking RIA for some *ex post* evaluations, which has helped to provide a discipline and a focus to those *ex post* evaluations.

Japan is one of nine OECD members that currently systematically refer to the RIA that formed the basis for the original design of the regulation. This helps to ascertain whether impacts have eventuated as they were originally anticipated, and also allows those conducting *ex post* evaluations to establish whether the original rationale for policy intervention remains in the public interest.

Stakeholder engagement is vital throughout the entire regulatory lifecycle, including *ex post* evaluation, in order to garner feedback about the actual impacts of regulations "on the ground", and to maintain both trust in and compliance with regulations in force (OECD, 2018[20]). Thirteen OECD members now systematically consult on *ex post* evaluations, thus recognising both its importance and value. Nevertheless, this is less systematically done than that undertaken during initial regulatory design (see stakeholder engagement section above). Informing affected stakeholders in advance of forthcoming *ex post* evaluations remains rare across the OECD membership.

Ex post *evaluation in times of crises*

The COVID-19 pandemic had a profound impact on many regulatory practices, as a number of actions had to be undertaken in an emergency context. From a recovery standpoint, *ex post* evaluation is one priority area, as undertaking a systematic process of review to assess what worked, what didn't, and what could have worked better will be fundamental to improving future wellbeing.

Ex post evaluation presents an opportunity for governments to retain emergency rules that have had unintended positive consequences. *Ex post* evaluations take on an increased importance where *ex ante* impact assessment was limited or non-existent because of the genuine urgency to regulate as information gaps are potentially much larger. It also allows governments to retrospectively review whether other rules introduced during this time remain in the public interest. However, only four OECD members have formal consequences requiring *ex post* evaluations to be undertaken for regulatory proposals which bypass *ex ante* impact assessment processes during times of emergency (see RIA section above). Therefore for the majority of OECD members, requirements to conduct any form of *ex post* evaluation on these laws needed to be considered at the time when those laws were introduced (i.e. via either sunset or automatic review clauses), via an ad hoc decision given the magnitude of their impacts, or via the standard *ex post* evaluation requirements (to the extent that they exist).

OECD members self-reported a total of 190 specific regulations that were issued in response to the COVID-19 pandemic as of the iREG survey return date of 18 September 2020 (Table 2.3). Around half of these regulations included a sunset clause, while automatic evaluation requirements were much less frequently used. Reflecting the continued uncertainty and longevity of the pandemic, almost one-fifth of the original sunsetting arrangements needed to be extended beyond their original date. In some instances, calls to include review clauses were rejected. In Australia, for example, the Australian Parliament attempted to include a review clause for some COVID-related laws but this was rejected by the Government.

For some OECD members, the COVID-19 pandemic was the first time that general review provisions had ever been used. Finland introduced a regulatory measure to compensate companies' costs during the pandemic, which included an automatic evaluation clause, which is a practice that Finland does not

normally include for regulations issued in other contexts. Similarly, Israel reported five regulations that all included sunsetting clauses, whereas ordinarily such clauses are not utilised.

Table 2.3. Many COVID-related regulations included sunset clauses, although automatic review clauses were much less frequent

	In general, do regulations include "sunsetting" clauses?		In general, do regulations include automatic evaluation requirements?		Number of self-reported specific regulations that were issued in response to the COVID-19 pandemic provided in the iREG survey	Number of sunset clauses included in self-reported regulations	Number of automatic evaluation clauses included in self-reported regulations	Number of self-reported regulations subsequently amended to extend the period of time before the regulation was due to sunset or be evaluated
	Primary laws	Subordinate regulations	Primary laws	Subordinate regulations				
Belgium					6	1	0	1
Canada					11	6	1	1
Chile					18	0	0	0
Czech Republic					6	6	0	1
Denmark					7	2	1	2
Estonia					4	0	0	0
Finland					6	4	1	1
France					6	2	0	4
Germany					17	14	1	7
Hungary					5	1	0	0
Iceland					5	3	0	1
Israel					5	5	0	0
Italy					6	4	0	1
Korea					4	2	0	2
Luxembourg					17	1	0	0
Mexico					6	0	0	1
Netherlands					3	2	0	0
New Zealand					7	6	0	0
Norway					4	4	0	0
Poland					3	3	1	1
Portugal					5	4	0	4
Slovak Republic					6	4	0	3
Slovenia					9	0	0	1
Spain					6	6	0	3
Sweden					8	3	0	2
Switzerland					3	3	0	0

	In general, do regulations include "sunsetting" clauses?		In general, do regulations include automatic evaluation requirements?		Number of self-reported specific regulations that were issued in response to the COVID-19 pandemic provided in the iREG survey	Number of sunset clauses included in self-reported regulations	Number of automatic evaluation clauses included in self-reported regulations	Number of self-reported regulations subsequently amended to extend the period of time before the regulation was due to sunset or be evaluated
	Primary laws	Subordinate regulations	Primary laws	Subordinate regulations				
United Kingdom					7	6	6	0
					Total No. of specific regulations that were issued in response to the COVID-19 pandemic provided in the iREG survey	Total No. of sunset clauses included in these regulations	Total No. of automatic evaluation clauses included in these regulations	Total No. of regulations subsequently amended to extend the period of time before the regulation was due to sunset or be evaluated
					190	92 (48%)	11 (6%)	36 (19%)

For all regulations
For major regulations
For some regulations
Never

Notes: The number of proposals may relate to particular legislative arrangements within OECD members and should not be used as an indicator of the level of government intervention nor as an indicator of the severity of the COVID-19 pandemic. Data are self-reported by 27 OECD members generally as at 18 September 2020. The number of regulations that were issued in response to the COVID-19 pandemic may have increased since that date.
Source: Indicators of Regulatory Policy and Governance Survey 2021.

These results suggest that there will be a significant number of forthcoming reviews on regulations that would otherwise sunset. In turn this highlights the importance of having core competences to conduct good quality *ex post* evaluations amongst the civil service. Co-ordination between entities conducting *ex post* evaluations and the respective oversight bodies will need to improve to ensure both the timely and prioritised review of COVID-related regulations. Last, the forthcoming reviews highlight the need to ensure that both the oversight bodies and entities conducting *ex post* evaluations are adequately resourced.

Many governments' immediate regulatory responses to deal with the COVID-19 pandemic were designed to have significant impacts on public health. The sheer volume of COVID-related laws passed will mean that there will be a significant flow of *ex post* evaluations in the future. The best practice principles note that priority should be given to reviewing those regulations that have both wide ranging and significant impacts on particular societal groups (OECD, 2020[24]). For a number of OECD countries, COVID-related responses took the form of omnibus Bills – targeting a range of areas from one piece of legislation. It may makes sense to review such laws in a package format so that all areas can be reviewed holistically (OECD, 2020[24]).

Decisions around the timing of *ex post* evaluations and PIRs emanating from the COVID-19 pandemic matter. Generally, *ex post* evaluations (and of post-implementation reviews – see RIA section above) ought to be undertaken at a point in time where sufficient data are collected to ascertain whether regulations have had their intended effect (OECD, 2020[24]). In Australia for example, generally PIRs are to be completed two years after the "implementation" of the policy is complete (five years for decisions which

have substantial or widespread impacts on the Australian economy) (Australian Government, 2020[26]). By its nature, the implementation period is extensive for some policies; especially for significant policy decisions with a broad range of impacts. The result is that a substantial amount of time could pass before the decision is reviewed. While this helps to increase the data collection period – indeed the evaluation should be more comprehensive because of it – it may mean that the decision is embedded to such an extent that even if the evaluation found the policy to be flawed in some way, nothing could be done about it (or the costs of doing something about it would exceed the anticipated benefits from its removal or modification).

As noted in Box 2.14, *ex post* evaluations do provide opportunities to learn from previous mistakes, as well as highlight what has worked well. In order to best manage the next crisis, *ex post* evaluations from the COVID-19 pandemic could form a valuable repository of information in the future for policy makers. The OECD is currently conducting a meta-analysis of all evaluations conducted by countries in the context of the COVID-19 pandemic, including on regulatory policy.

Extended areas of monitoring of the 2012 Recommendation

Access to justice

In their day to day lives, there are moments when citizens and businesses need decisions by public authorities to be able to carry out their desired or needed activities. For instance, when they request a license to operate in a regulated sector or to drive a car. It is also the case when a regulator imposes a sanction to an individual for not complying with an existing regulation. When applying these regulations, policy makers are called to act within the scope of their legal powers, be reasonable and proportionate when deciding individual cases. Though in principle those decisions are expected to be impartial and lawful, it might be that the recipient of the decision does not agree with it, and has an argument against its legality, the fairness of the procedure, or even whether due process was respected when making the decision.

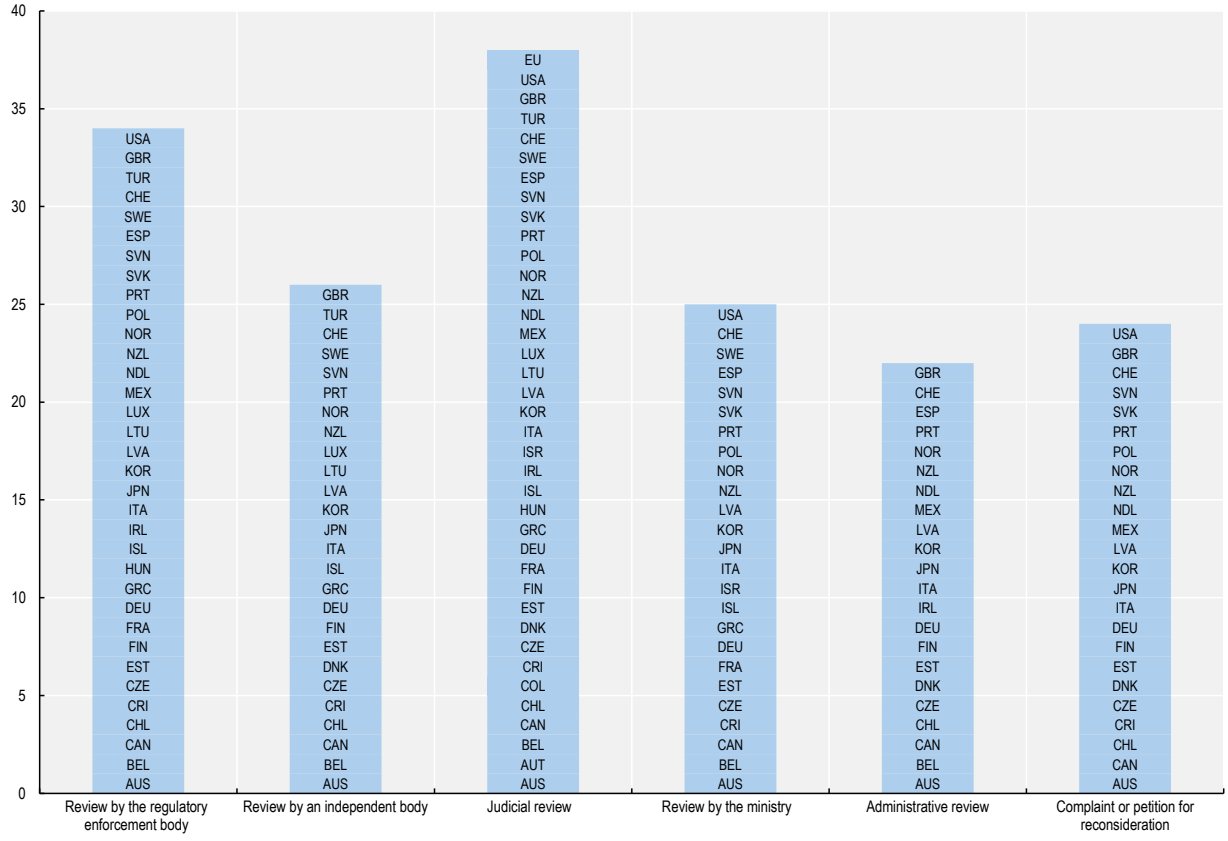
These businesses and citizens should have avenues to challenge or appeal individual decisions that those authorities in the application of existing regulations, as called for by the 2012 Recommendations. The existence and use by the public of these mechanisms prevents abuse of discretionary authority, and preserves the integrity of the regulatory system, which in turn improves the effectiveness of well thought out regulations.

Mechanisms *to challenge decisions made in individual cases* exist in all OECD members. In almost all countries, citizens and businesses can have those decisions reviewed by a court (in 38 countries) or by the body in charge of enforcing the regulation that was the base for the decision (in 34 countries). In some countries, there are other mechanisms available to challenge these decisions. For instance, it is possible to appeal an individual decision before an independent body (in 26 countries), have a ministry review the decision (in 25 countries) or have the decision reviewed by a specialised administrative jurisdiction (in 22 countries) (see Figure 2.21). In addition, 24 OECD members reported that it is possible for businesses and citizens to issue a petition to the agency that made the decision to reconsider the decision, for instance, when a licence to start a businesses is denied.

Being able to challenge the application of an individual regulation is essential, but it is also essential for the decision to that challenge to come in a timely manner. This allows businesses and citizens to plan accordingly, and estimate the risks and costs that a negative or positive response might entail in time. For this, governments are called to have standard time periods on which a business or individual can expect a decision to be made when appealing against a regulatory decision, to the extent possible (OECD, 2012[1]). Ten of the surveyed countries reported having a standard period within which parties can expect a decision to be made for at least one of the mechanisms for challenging individual decisions. However,

most countries indicated that the existence of these periods depends on many factors, such as the mechanism itself, the legislation that may govern the form of review, the complexity of the case, the workload of the deciding body, etc. For instance, judicial reviews in Canada are not subject to deadlines as it could fetter the discretion of the courts, but there are sectorial administrative regulations, such as the Canada Transportation Act, that sets out specific timelines.

Figure 2.21. There are mechanisms available to challenge individual regulatory decisions



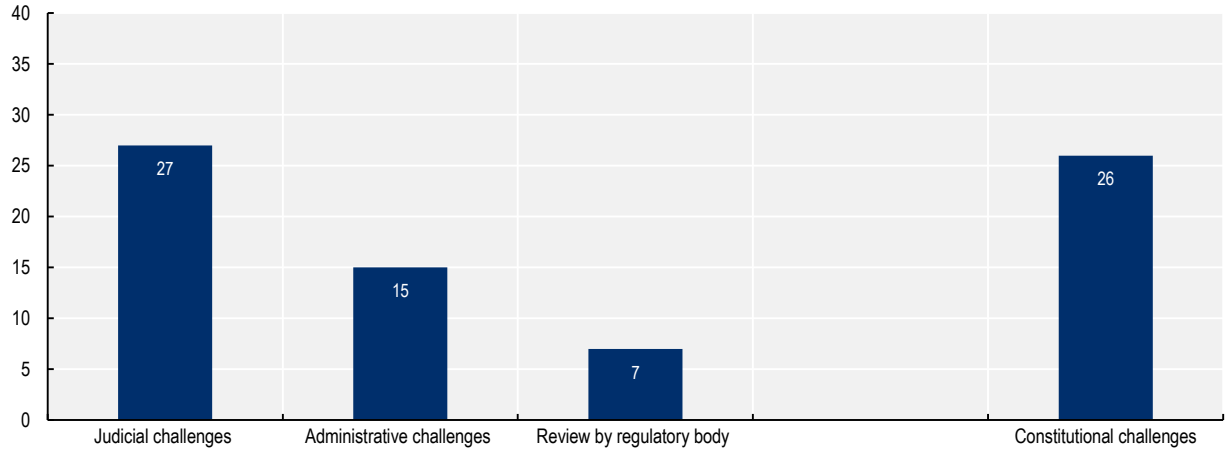
Note: Data are based on 38 OECD members and the European Union.
Source: Indicators of Regulatory Policy and Governance (iREG) Survey 2021.

In addition businesses and, where relevant, citizens more broadly, should have access to mechanisms *to challenge regulations themselves* on which those decisions are based. This helps remove from the legal system any existing regulation that might have missed a legal or constitutional filter during its development and therefore does not fit the legal framework of the country, may also help eliminate at least some regulations that do not pass a proportionality test. This then stops those illegal or unconstitutional regulations from being used and applied to other citizens and businesses, helping to the consistency and effectiveness of the regulatory system.

Both citizens and businesses have a least one mechanism to challenge the legality of existing regulations in 27 of all surveyed countries. The most common mechanism that countries reported having is judicial challenge, where businesses and citizens can challenge the legality of an existing regulation before a court. Also, 15 of the surveyed countries provide their citizens the possibility to challenge the legality of an existing regulation before an administrative jurisdiction. A few countries reported that it is possible to challenge the legality of a regulation before regulatory bodies, where, for instance, it is possible to challenge the legality of the regulation issued by an economic regulator before said regulator. In addition,

26 of the surveyed countries reported having a mechanism for the public to challenge a regulation that is not in accordance with their respective constitutions (see Figure 2.22). As with being able to challenge the legality of a regulation, having mechanisms to remove a regulation from the legal system based on its lack of compatibility with the constitution, helps with the coherence of the regulatory framework, and the fair treatment of all citizens and businesses.

Figure 2.22. Most countries have at least one mechanism to challenge existing regulations



Note: Data are based on 38 OECD members and the European Union.
Source: Indicators of Regulatory Policy and Governance (iREG) Survey 2021.

Regulatory coherence across levels of governments

The *2012 Recommendation of the Council on Regulatory Policy and Governance* invites countries to "promote regulatory coherence through co-ordination mechanisms between the supra national, the national and sub-national levels of government". Furthermore, it advises countries to "Identify cross cutting regulatory issues at all levels of government, to promote coherence between regulatory approaches and avoid duplication or conflict of regulations". Additionally, the *Recommendation* urges countries to "Foster the development of regulatory management capacity and performance at sub-national levels of government" (OECD, 2012[1]).

In this sub-section we report the results and findings of data collected across OECD jurisdictions to attempt to measure progress in implementing some key elements of these recommendations.

Sub-national governments have a key role in delivering public policy objectives through regulations. They may have the legal capacity to issue and enforce regulation within their own domains, as in federal-type jurisdictions. Or they may be tasked to implement and enforce regulations issued by upper levels of government, through the issuance of secondary legal instruments, such as by-laws, manuals or guidelines, coupled with actions to ensure the enforcement and compliance of the regulations, such as inspections. The latter activities are commonplace across both federal and unitary-type countries.

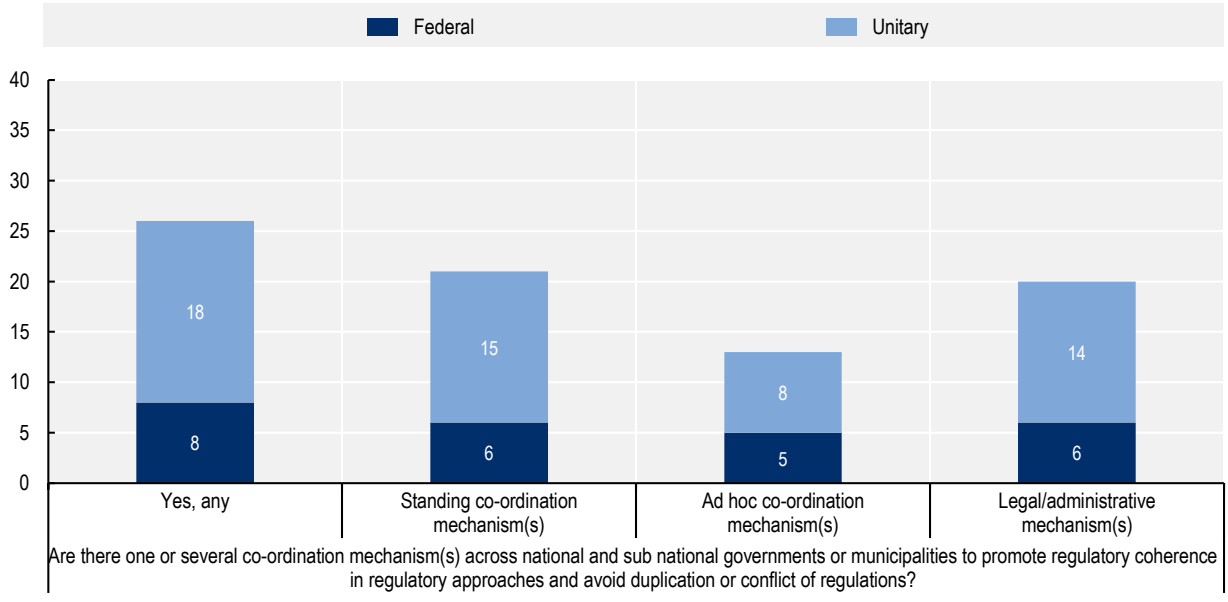
In this setting, the national or central levels of government should warrant that there are mechanisms in place to ensure that there is regulatory coherence to avoid voids, overlaps or conflicts in both the contents of the regulatory instruments and the enforcement approaches across levels of government. Additionally, sub-national governments are part of the public administration machinery, and as such, they should be able to follow principles and apply the appropriate tools to ensure that regulations they issue are of high-quality. Also, they should ensure that they are effective in enforcing and implementing the regulatory

framework. To achieve this, national or central levels of government should step in to help generate the necessary capacities in sub-national governments.

For instance, a small business owner facing stricter regulatory requirements in health aspects due to the pandemic caused by the COVID-19 may need to comply with specific levels of hygiene in his restaurant's kitchen, as set by a national law on health. The regional government has issued the guidelines and procedures to comply with this requirement, and the local government is tasked with carrying out inspections to verify the compliance with the procedure and the standard. In this example, the public policy objective is clearly to protect the health of customers when consuming in the restaurant. However, this objective can only be achieved effectively if the guidelines and procedures issued by the regional government are fully consistent with the national law on health. Moreover, the preparation and publication of this secondary regulation would benefit from applying tools on regulatory management to promote regulatory quality such as RIA and stakeholder engagement. This will only be possible if regional governments have the capacity to implement and use these tools. The same reasoning applies to local governments responsible for the enforcement and inspections of the regulatory framework. An argument can even be raised to establish co-ordination mechanism across levels of governments, so the results of the enforcement and inspection activities loop back into the ex-post assessment of the law, the procedures and guidelines, which will help ascertain whether the public policy objective is being achieved.

With some variations, similar examples to the one mentioned above can be found across OECD countries, regardless of whether they are considered federal or unitary-type countries. Hence, the relevance of attempting to measure the progress in implementing the *2012 Recommendation* on the aspects of regulatory coherence across levels of governments, and on fostering of regulatory policy in sub-national governments. In general, the data collected shows that practices across OECD countries to pursue these objectives are not commonplace yet. This finding contrasts with the general uptake of tools such as RIA and stakeholder engagement. Hence, countries have ample opportunities to engage in actions with sub-national governments that will benefit the overall effectiveness of the regulatory framework in delivering policy objectives.

Figure 2.23. Mechanisms to promote regulatory coherence with sub-national governments



Note: Data are based on 38 OECD member countries. The countries considered as federal type are: Australia, Austria, Belgium, Canada, Germany, Mexico, Switzerland, and the United States of America. The EU is not included in the data.
Source: Indicators of Regulatory Policy and Governance Survey 2021.

Figure 2.23 presents the results of the question "Are there one or several co-ordination mechanism(s) across national and sub-national governments or municipalities to promote regulatory coherence in regulatory approaches and avoid duplication or conflict of regulations?" and it identifies the type of mechanism when countries answer positively. 26 out of 38 respondents confirmed that they have a mechanism in place, where one of the most common types is a standing co-ordination mechanism. The National Federation Reform Council of Australia and the National Council on Better Regulation of Mexico provides examples of the standing co-ordination mechanism that seeks to promote regulatory coherence across levels of government (see Box 2.16 and Box 2.17).

Box 2.16. Jurisdictions' co-ordination in Australia: the National Federation Reform Council

On 29 May 2020, the National Cabinet of Australia, composed by the Prime Minister, the Premiers and the Chief Ministers, agreed to create the National Federation Reform Council (NFRC) in order to co-ordinate Australia's response to COVID. The creation of the NFRC was an agreement of the National Cabinet to substitute the Council of Australian Governments (COAG) and continue providing a joint forum for the First Ministers and Treasurers of all Australian jurisdictions and the President of the Australian Local Government Association (ALGA) to discuss national federation issues.

The NFRC will meet annually and the Department of the Prime Minister and Cabinet (DPMC) co-ordinates it, as one of its policy objectives is the Effective Commonwealth-State Relations by supporting productive relationships between state, territory and Commonwealth Governments.

National Federation Reform Council

The inaugural meeting of the NFRC was on 11 December 2020. The very first task and one of the first achievements declared was the effective teamwork to slow the spread of COVID-19, save lives, keep Australians in work and businesses in business. In particular, the discussions focused on cross-jurisdictional reforms in critical areas, including mental health and national emergency management. According to the NFRC statement, the Australian response to COVID-19 emergency was delivered by the Commonwealth, state and territory governments working together through National Cabinet, which reformed the intergovernmental architecture to pursue an effective strategy:

- National Cabinet Reform Committees to support National Cabinet's job creation agenda
- National Federation Reform Council (NFRC) and NFRC Taskforces to deal with priority federation issues that fall outside National Cabinet's job creation remit
- Ministers' meetings that are more agile and responsive, significantly reducing bureaucracy and red tape.

National Federation Reform Council Taskforces

The NFRC has established three Taskforces to help progress matters critical to the national agenda:

- Women's Safety
- Indigenous Affairs
- Veterans' Wellbeing.

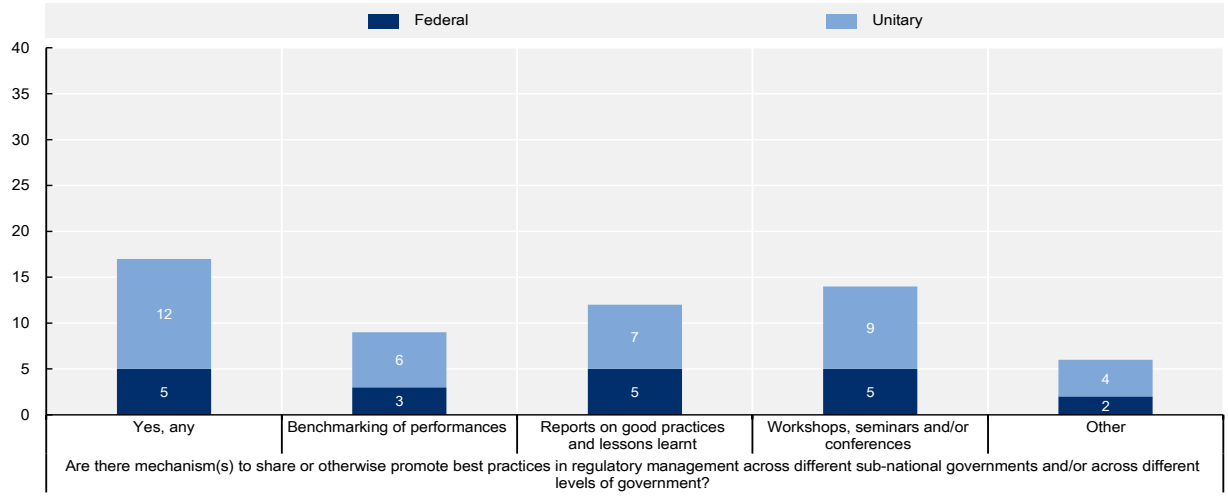
Within the NFRC inaugural meeting, the Prime Minister announced the Terms' of Reference (ToRs) on Women's Safety taskforce. ToRs indicates frequency of meetings, membership (Commonwealth, state and territory Women's Safety Ministers) and operation and decision making rules, scope of responsibility and reporting. According to the ToRs, the taskforce will take decisions and agree common principles but implementation will be flexible across the jurisdictions to account for specific circumstances.

Source: (Government of Australia, 2020[27]).

In Figure 2.23 it stands out that all countries which could be considered federal have some type of mechanism which seeks to promote regulatory coherence. By the same token, the data shows that eighteen countries which can be categorised as unitary also have this type of mechanism. Hence, the data shows that two thirds of surveyed countries consider important to establish practices that advocate for a consistent regulatory system, irrespective of a federal or unitary status. This suggests that the rest of the OECD countries have the opportunity to implement systems to engage with sub-national governments to enhance the quality of the regulatory framework, regardless of the status of a unitary-type jurisdiction.

One of the ways to foster the development of regulatory management capacity and performance at sub-national levels of government is by promoting best practice across these governments, and between the sub-national and national levels. The sharing of lessons learned, successful cases, and the "dos and don'ts" in the design, implementation and evaluation of regulatory policy and its tools can be an effective way of promoting their adoption. Figure 2.24 shows that only 17 out of 38 countries have these sharing mechanisms in place, in which workshops, seminars or conferences is the most common type of practice, followed by reports on good practices and lessons learned. Therefore, this result suggests that OECD countries have ample room to establish mechanisms to share best practices in regulatory management, and this applies to both federal and unitary types of governments.

Figure 2.24. Mechanisms to share best practices across sub-national governments



Notes: Data are based on 38 OECD member countries. The countries considered as federal type are: Australia, Austria, Belgium, Canada, Germany, Mexico, Switzerland, and the United States of America. The EU is not included in the data.
Source: Indicators of Regulatory Policy and Governance Survey 2021.

Mexico offers an example on reports that benchmark regulatory management practices at the subnational level through the reports prepared by the National Observatory on Better Regulation (see Box 2.17).

Box 2.17. The National System and the National Observatory on Better Regulation of Mexico

In 2018, Mexico issued the General Law for Better Regulation, which, among other things, aims to harmonise the regulation among the three levels of government: federal, state and municipal. For that, the Law created the National System for Better Regulation. The purpose of the National System is to co-ordinate the authorities of all orders of government through the National Strategy on Better Regulation, regulation, principles, objectives, plans, guidelines, bodies, instances, formalities and the national policy on better regulation. The National System for Better Regulation is formed by:

- The National Council on Better Regulation;
- the National Strategy on Better Regulation;
- the National Commission on Better Regulation (CONAMER);
- the Better Regulation Systems at sub-national levels; and
- the National Observatory on Better Regulation.

The National Council on Better Regulation

The National Council on Better Regulation is responsible for co-ordinating the national policy. It includes the co-ordination with the Better Regulation Unit of every state of the country. Each state has issued a law on better regulation to implement the better regulation policy that the National Strategy mandates. This National Council meets at least twice a year. From its ordinary sessions, the National Council agreed to create specialised working groups. Up-to-date, the National Council has created two groups: the group for administrative simplification of the regulation of gasoline, L.P. gas and natural gas service stations and the group on regulatory reforms at the subnational level. CONAMER has a specific website for the information related to the sessions and functioning of the National Council on Better Regulation: https://conamer.gob.mx/cnmr/Home.

The National Observatory on Better Regulation

The National Observatory on Better Regulation is an instance of citizen participation in charge of monitoring and evaluating the performance of the better regulation policy at sub-national level. It assesses three categories: Policy, Institutions and Tools. To date, the National Observatory on Better Regulation has published two reports available in http://onmr.org.mx/. The Policy indicator analyses the regulatory framework that underpins the regulatory reform policy in the state and municipality, e.g. the State Laws on Better Regulation. The Institutions indicator analyses the strength and operation of the bodies of the state or municipality to apply and promote regulatory reform, such as the State Councils on Better Regulation. The Tools indicator analyses the implementation of better regulation instruments in the state or municipality, e.g. the Rapid Business Start-up Systems. Currently, the Mexican Business Coordinating Council and the US Agency for International Development (USAID) operate the National Observatory.

Source: (CONAMER, 2021[28]), (Congreso de la Unión, 2018[29]), (Ministry of Economy, 2021[30]).

Figure 2.25 shows the results of data collected to probe further in other types of mechanisms to foster the development and performance of regulatory policy at sub-national levels of government, and the actual use of this policy. For instance, 15 countries answered that they actively support the implementation of regulatory policy in this level of government. The Primary Authority scheme of the UK offers a relevant example of how central government can support local governments in the delivery and enforcement of regulations (see Box 2.18).

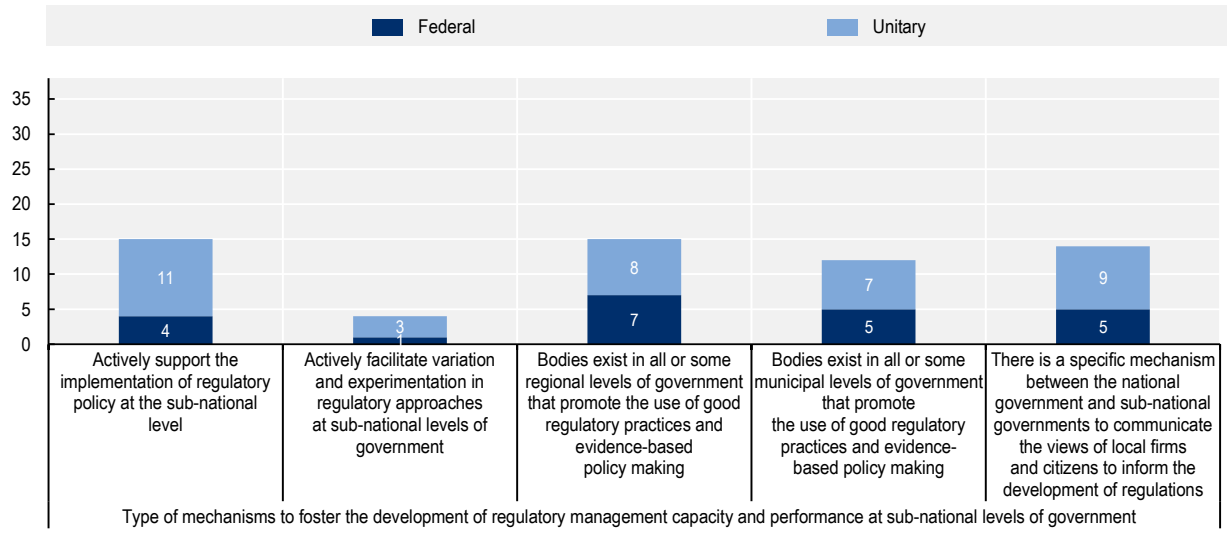
One of the central elements to aspire to an effective design and implementation of regulatory management practices is to have a body that promotes the use of good regulatory practices and evidence-based policy making. Figure 2.25 shows that 15 countries have this type of body in all or some of their regional governments, and 12 at the municipal level.

Stakeholder engagement is another practice that is key for an effective system that promotes regulations based on evidence. Figure 2.25 indicates that only 14 countries have a specific mechanism between the national and sub-national governments to communicate the views of local firms and citizens to inform the development of regulations.

Finally, Figure 2.25 shows that there is an incipient use of actions oriented to facilitate variation and experimentation in regulatory approaches at sub-national levels of government. Only four countries reported engaging in these practices. Practices might include alternative approaches to regulation, use of ICT tools such as machine learning, and special regimes such as sandboxes.

Overall, Figure 2.25 shows there are several gaps that OECD countries could bridge in order to foster the development and performance of regulatory management capacity at sub-national levels of governments. This assertion is valid for both federal type and unitary countries. For instance, OECD countries could promote the establishment of a body at sub-national levels of government tasked with the oversight of regulatory policy. Also, there is room to foster the formation of procedures to collect and employ the feedback and opinions of local firms and citizens to strengthen regulatory policy at the sub-national and national level.

Figure 2.25. Mechanisms to foster the development of management capacity and performance at sub-national level



Notes: Data are based on 38 OECD member countries. The countries considered as federal type are: Australia, Austria, Belgium, Canada, Germany, Mexico, Switzerland, and the United States of America. The EU is not included in the data.
Source: Indicators of Regulatory Policy and Governance Survey 2021.

Box 2.18. The Primary Authority scheme in the United Kingdom : a mechanism to boost regulatory delivery at sub-national level

The Regulatory Enforcement and Sanctions Act 2008 (amended by the Enterprise Act 2016) establishes “Primary Authority” as a statutory scheme in which a local authority takes on responsibility for providing advice and guidance to businesses on how they are regulated by local authorities. In particular, Primary Authority covers regulation regarding environmental health, trading standards and fire safety.

Primary Authority is conducted through a partnership between businesses and a chosen local authority. However, if a Primary Authority is not able to cover all the regulatory areas required by businesses, they can find an additional partner to meet their needs. In addition, if the businesses trade in both England and Wales, they can have a primary authority in both nations for areas of legislation that are

delegated to the Welsh Government. Regulators operating as primary authorities include county, district and unitary councils, and fire and rescue authorities.

At the national level, the Office for Product Safety & Standards (OPSS) from the Department for Business, Energy and Industrial Strategy (BEIS) is responsible for Primary Authority and manages the Primary Authority Register. Furthermore, national regulators also play a role in this scheme, as some of them can be "supporting regulators" for Primary Authorities, making arrangements to provide support in its provision of Primary Authority Advice. National regulators can be a source of expertise for primary authorities, while the latter support national regulators to better understand and engage with local businesses.

Benefits for businesses include:

- Access to relevant and authoritative advice from Primary Authorities
- Recognition of robust compliance arrangements
- Effective means to meet business regulations and on suitability of business control systems
- Confidence that they are protecting themselves and their customers.

Benefits for regulators include:

- Clarity over where responsibility lies
- Support local economic growth through stronger business relationships
- Improve coherence of local regulation and target resources on high-risk areas
- Develop their staff expertise via partnerships
- Protect front line services through cost recovery, as local authorities are allowed to charge a cost recovery fee for primary authority services supplied.

Benefits for citizens include:

- Effective protection, as businesses comply with legislation more effectively
- Risk reduction due to a better understanding of businesses and focus on high-risk areas.

Source: (BEIS, 2017[31]).

To conclude, actions taken by OECD countries to promote regulatory coherence across levels of government and to foster the development and performance of regulatory management capacity in sub-national governments are not widespread yet. As set out by the *2012 Recommendation on Regulatory Policy and Governance*, OECD countries should consider including mechanisms to incorporate sub-national governments in the design and implementation of their regulatory quality policies. The 2020 iREG data demonstrates that several countries have advanced in this front, in both federal and unitary type jurisdiction, and this progress should be employed as inspiration for more action.

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3 Regulatory oversight

This chapter analyses the institutional organisation of regulatory oversight as well as its evolution over time. It then focuses on existing oversight and quality control mechanisms for regulatory management tools, as well as on related performance assessment practices. The chapter concludes with a set of considerations on the meaning and determinants of well-performing regulatory oversight, with special attention to coordination-related functions and results-oriented approaches.

Key findings

- **Robust oversight is crucial for effective regulatory policy and for implementing the 2012 Recommendation of the Council on Regulatory Policy and Governance**. The Recommendation stresses the importance of establishing mechanisms and institutions to provide oversight of regulatory policy procedures and goals, support and implement regulatory policy, and thereby foster regulatory quality. Regulatory oversight bodies (ROBs) need to incentivise civil servants to use regulatory management tools, follow due process, and co-ordinate across the public administration to produce high-quality regulations, foster a whole-of-government perspective towards regulation and ensure a consistent approach to regulatory policy.
- **ROBs have a crucial role to play in promoting international regulatory co-operation and as in adopting innovative and forward-looking approaches to address uncertainty and enhance systemic resilience.** In light of emerging phenomena requiring concerted global action, such as health threats, climate and environmental issues, and rapid technological change, ROBs can contribute to future-proofing rulemaking. Provided that they have adequate powers, resources and capacity, they can do so by adopting a holistic and anticipatory perspective in their scrutiny of regulatory management tools and acting as knowledge brokers *vis-à-vis* ministries and regulatory agencies.
- **OECD members remain invested in regulatory oversight.** All members continue to have at least one ROB in charge of promoting regulatory policy and monitoring regulatory reform and regulatory quality, highlighting the crucial importance of dedicated mechanisms and institutions to ensure decision making is systematically grounded on the best available evidence.
- **A number of OECD members have continued to strengthen and institutionalise their existing oversight mechanisms.** Since the beginning of 2018, five ROBs have had their mandate renewed and seven of them have become permanent. In addition, a number of them have assumed new responsibilities, which may be a sign of governments' willingness to embed these ROBs further in the wider regulatory policy environment.
- This chapter focuses on "core" functions of regulatory oversight. **Compared with the snapshot presented in the previous edition of the *Outlook*, whose focus was broader, the current institutional framework for regulatory oversight appears less fragmented**. Nevertheless, with responsibilities for certain oversight functions generally spread over more than one ROB, effective co-ordination on regulatory policy matters remains essential. Indeed, many countries choose to locate the main responsibility for that function as close to the centre of government as possible.
- **Among the four dimensions covered by the OECD composite indicators, *oversight and quality control* of regulatory management tools, which accounts for the role and attributions of ROBs as well as for publicly available evaluations, remains comparatively underdeveloped**. Over the 2014-2020 period, this dimension has shown the lowest scores in each composite indicator, which highlights the need for stepping up efforts in this area.
- **While oversight of *ex post* evaluations is progressing in relative terms, this progress remains slow**. Only about 30% of jurisdictions have a dedicated body for *ex post* evaluation scrutiny and just under one-third of ROBs focus on this function. In the same vein, only about half of the jurisdictions with formal requirements for stakeholder engagement have a designated body to oversee that related practices are up to standard. Oversight focus continues to lie primarily with the scrutiny of RIA quality, as the vast majority of jurisdictions have a ROB in charge of this function and about 75% of all ROBs count it among their responsibilities.

- **A number of OECD members are taking action to ensure that ROBs are able to adapt to, and help address, emerging needs and challenges.** Increased uncertainty and complexity around decision-making means that regulatory oversight must evolve if it is to be effective. Steps are being taken in that direction: almost half of jurisdictions report having an oversight body focusing on innovation-friendly regulation, e.g. by helping ministries and regulators take into account the impacts of regulation on innovation. In addition, about 40% of jurisdictions report having a body overseeing regulatory quality during a crisis (e.g. in the context of emergency rulemaking).
- **Country examples show that, by promoting a co-ordinated and comprehensive approach to regulatory analysis, providing ongoing support and creating buy-in, ROBs can make a difference for regulatory quality**. Beyond institutional design and related requirements, ROBs' legitimacy, credibility, influence, and ability to elicit buy-in from those involved in better regulation across government are important factors for success. While some of them are often harder to track and measure given their rather "intangible" nature, they should by no means be overlooked.
- **Results-oriented, systematic performance assessment holds the key to improving regulatory oversight in the years to come.** However, there is still scant evidence on the impact of regulatory oversight on regulatory improvement or, for that matter, on broader policy goals. In part, this is because ROBs' reporting activity focuses primarily on process, implementation and conformity with formal requirements rather than effectiveness and outcomes. Certain jurisdictions are, however, showing the way by deploying considerable efforts to monitor and evaluate the results of ROBs' work. In addition, there are promising examples of how new technology-based solutions and analytical tools can help improve our understanding of ROBs' performance and its determining factors in order to maximise the value of regulatory oversight processes and structures.

Introduction

Robust oversight is a cornerstone of effective regulatory policy and practical implementation of the 2012 Recommendation of the Council on Regulatory Policy and Governance, which notably stresses the importance of establishing mechanisms and institutions to actively provide oversight of regulatory policy procedures and goals, support and implement regulatory policy, and thereby foster regulatory quality.

Regulatory oversight bodies (ROBs) need to incentivise civil servants to use regulatory management tools and follow due process to produce high-quality regulations, foster a whole-of-government perspective towards regulation and ensure a consistent approach to regulatory policy through appropriate co-ordination across the public administration. In light of emerging phenomena warranting concerted action globally, such as health threats, climate and environmental issues or technological change, ROBs also have a crucial role to play in promoting international regulatory cooperation as well as the adoption of innovative practices and forward-looking approaches to deal with uncertainty and enhance systemic resilience. The Recommendation of the Council for Agile Regulatory Governance to Harness Innovation and related practical guidance underscore the importance of regulatory oversight in that context (see also chapter on Regulatory policy 2.0).

Despite the critical role of regulatory oversight systems in enabling effective regulatory frameworks, available evidence points to significant room for improvement in this area. For example, among the four dimensions covered by the OECD composite indicators (see Chapter 2 on regulatory management tools for more details), *oversight and quality control* of regulatory management tools has remained comparatively underdeveloped over the 2014-2020 period. Challenges relating to the COVID 19 crisis raise, in turn,

questions about the role of ROBs in emergency and high-uncertainty contexts. The present chapter builds upon previous OECD-led efforts to gain a better understanding of regulatory oversight systems. It provides updated information with a focus on "core" functions of regulatory oversight undertaken on a systematic basis: quality control of regulatory management tools; issuance or provision of relevant guidance on the use of regulatory management tools; co-ordination on regulatory policy and systematic evaluation of regulatory policy (see Box 3.1).

The main source of data and information is iREG 2020, which has fully integrated selected content from the 2017 OECD survey on regulatory oversight bodies for greater coherence and minimal burden for respondents. In addition, new data have been collected on oversight of *ex post* evaluation. Bodies outside the executive branch of government may be underrepresented in the sample given the strong focus on, and reporting by, government entities. In addition, respondents reported the smallest unit with responsibility for oversight function, which means several bodies may belong to same ministry or department. Data in this chapter are expressed using two basic complementary units: percentage (or number) of jurisdictions and percentage (or number) of all ROBs considered (across all jurisdictions). Unless otherwise stated, jurisdictions include OECD members and the European Union.

Box 3.1. "Core" functions of regulatory oversight

While previous analytical work by the OECD pertaining to regulatory oversight was broad in scope in order to capture a wide variety of situations, the 2021 Regulatory Policy Outlook focuses on selected core functions. These core functions have been identified in previous work carried out by the Secretariat based on analysis by Andrea Renda and Rosa J. Castro (Renda, Forthcoming[1]) as being essential for effective regulatory oversight.

The functions considered as core are:

- Quality control of regulatory management tools (i.e. reviewing the quality of individual regulatory impact assessments, stakeholder engagement processes, and *ex post* evaluations);
- Issuance or provision of relevant guidance on the use of regulatory management tools;
- Co-ordination on regulatory policy; and
- Systematic evaluation of regulatory policy.

Narrowing down the scope of functions aims to reduce survey burden for delegates, improve data quality and comparability, and enable robust analysis. It is also in line with the conclusion from the April 2018 meeting of the Steering Group on Measuring Regulatory Performance that, "for further analytical work, the identification of core and non-core functions of regulatory oversight may be helpful to refine and narrow the analysis".

Although relevant actors of regulatory policy, a number of bodies' contribution is ancillary to core regulatory oversight functions. For the sake of consistency, bodies that do not perform core oversight functions or do so only on an ad hoc basis are therefore not considered for analytical purposes. Below is a list of bodies that are excluded on those grounds:

- Better regulation units inside ministries/departments;
- Public think tanks and advisory bodies;
- Behavioural Insights Teams;
- Competition authorities;
- Ad hoc task forces;
- Permanent consultation bodies;

- Public training schools for civil servants;
- Budget and investment ministries/agencies;
- Trade ministries/units;
- Ministries of foreign affairs.

The chapter first analyses the institutional organisation of regulatory oversight as well as its evolution over time. It then discusses in more detail existing oversight and quality control mechanisms for regulatory management tools based on country-level data and relevant examples. The chapter concludes with a set of considerations on the meaning and determinants of well-performing regulatory oversight.

OECD members have continued to strengthen and institutionalise existing regulatory oversight systems

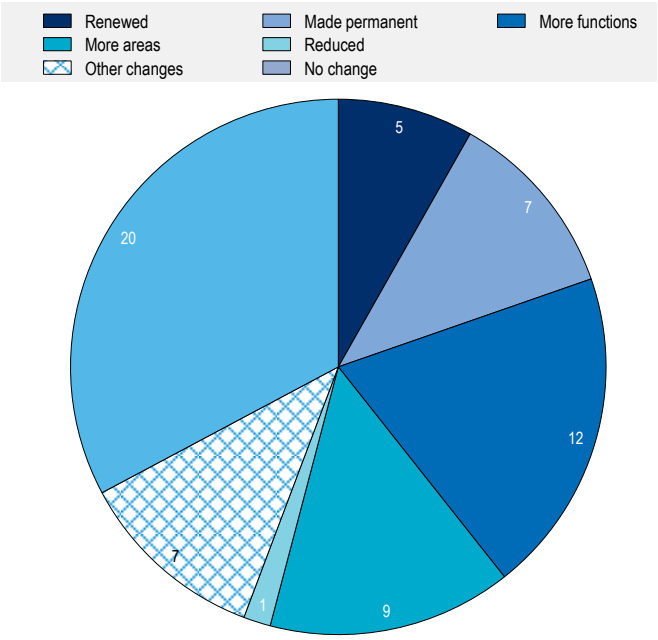
This section explores the institutional arrangements and organisation of regulatory oversight functions in OECD countries, including their evolution in comparison with the situation 2017, when data were last collected (and in 2014 whenever data are available).

OECD members remain invested in regulatory oversight. In 2020, as in 2017, all 39 reporting jurisdictions continued to have at least one dedicated body responsible for promoting regulatory policy as well as monitoring and reporting on regulatory reform and regulatory quality in the national administration from a whole-of-government perspective (this figure stood at 33 in 2014).[1] This highlights the crucial importance of dedicated mechanisms and institutions to ensure decision-making is systematically grounded on the best available evidence.

In line with the 2012 Recommendation on of the Council on Regulatory Policy and Governance, a number of OECD members have continued to strengthen and institutionalise their existing oversight mechanisms. 2017 data showed that the mandates of the vast majority of ROBs were established in either law or statutory requirement or, alternatively, in a presidential or cabinet directive. According to 2020 data, ROBs continue to have a strong legal anchoring. As shown in Figure 3.1, since the beginning of 2018, five ROBs have had their mandate renewed and for seven of them it has become permanent. The latter include Denmark's Government Economic Committee, the two bodies within Greece's Secretariat General of Legal and Parliamentary Affairs, Latvia's State Chancellery, Mexico's CONAMER, Portugal's Technical Unit for Legislative Impact Assessment, and Spain's Regulatory Coordination and Quality Office. In addition, a number of ROBs have assumed new responsibilities, which may be a sign of governments' willingness to embed these ROBs further in the wider regulatory policy environment.

Compared with the snapshot presented in the previous edition of the Outlook, which relied on a broader definition, the current institutional framework for regulatory oversight appears less fragmented - although there are generally several ROBs sharing certain functions. In total, 92 ROBs across all jurisdictions were reported as being in charge of performing at least one core regulatory oversight function on a systematic basis as of end 2020. This amounts to an average of nearly 2.4 ROBs per jurisdiction. By means of comparison, 163 ROBs (or more than four per jurisdiction on average) were considered for analytical purposes in the previous edition of the Outlook, which relied on a broader definition. Even so, with responsibilities for certain oversight functions often in the hands of more than one ROB, effective coordination on regulatory policy matters remains essential nevertheless. Many countries therefore choose to locate the main responsibility for that function as close to the centre of government as possible.

Figure 3.1. Changes to the mandate of ROBs



Note: Data is based on 38 OECD member countries and the European Union. Across all jurisdictions, changes to mandate were reported for 19 ROBs.
Source: Indicators of Regulatory Policy and Governance Survey 2021.

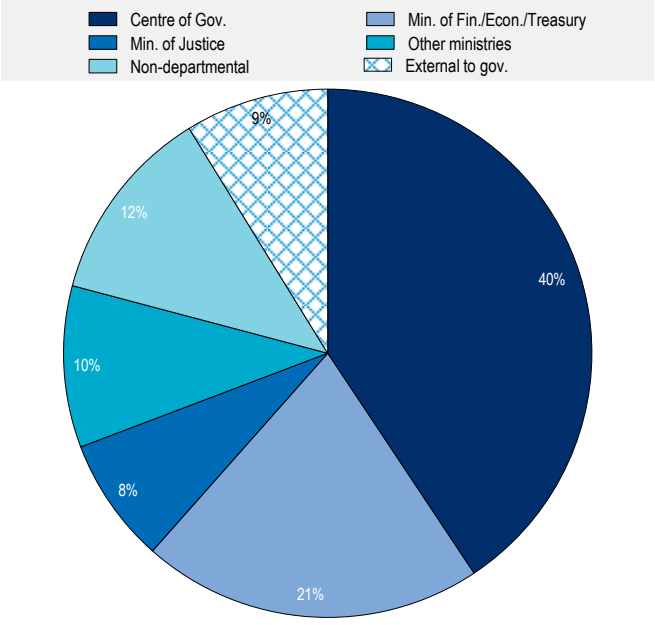
As shown in Figure 3.2, more than three-quarters of ROBs are located within government, half of which at the centre of government, i.e. in a body that provides direct support and advice to the Head of Government and the Council of Ministers, for example: Heads of Prime Minister's Offices, Cabinet Secretaries, or Secretaries-General of the Government (OECD, 2020[2]). In addition, most jurisdictions have more than one ROB within government. The latest data also confirm the prominent role of non-departmental bodies in regulatory oversight. In most cases, these are arm's length bodies, which are not subject to the direction on individual decisions by executive government but may be supported by government officials (OECD, 2018[3]). In a context where analytical rigour and credibility are paramount, these bodies are valuable sources of advice and scrutiny. In most jurisdictions where this kind of bodies operate, they also evaluate regulatory policy and contribute to the policy debate by putting forward suggestions for reform. For example, RegWatchEurope, a network of independent bodies, has issued recommendations for developing regulatory oversight further at EU level (RegWatchEurope, 2020[4]).

Among core oversight functions, the most widespread remains quality control of RIA: about 75% of all ROBs, across jurisdictions, have it among their responsibilities. By contrast, only about 45% and 30% of all ROBs are responsible for quality control of stakeholder engagement activities and *ex post* evaluation of regulation respectively. The other two core functions considered, guidance on the use of regulatory management tools and systematic evaluation of regulatory policy are within the remit of about 70% and 55% of all ROBs respectively.

ROBs carrying out core regulatory oversight functions typically perform "non-core" functions that are also important. The most frequent among these functions relate to the systematic improvement of regulatory policy and advocacy across government (e.g. by proposing changes to the regulatory policy framework, promoting the use of good regulatory practices or ensuring institutional relations), in which about 75% of all ROBs are involved. About two-thirds of ROBs are in turn responsible for training and capacity building activities regarding the application of regulatory management tools, and nearly half of them for identifying

areas of policy where regulation can be made more effective, e.g. by gathering opinions from stakeholders, preparing reviews of existing regulation or analysing the stock and/or flow of regulation. Scrutiny of the legal quality of regulation under development, in turn, is among the functions of nearly 40% of all ROBs.

Figure 3.2. Location of ROBs (in % of total)



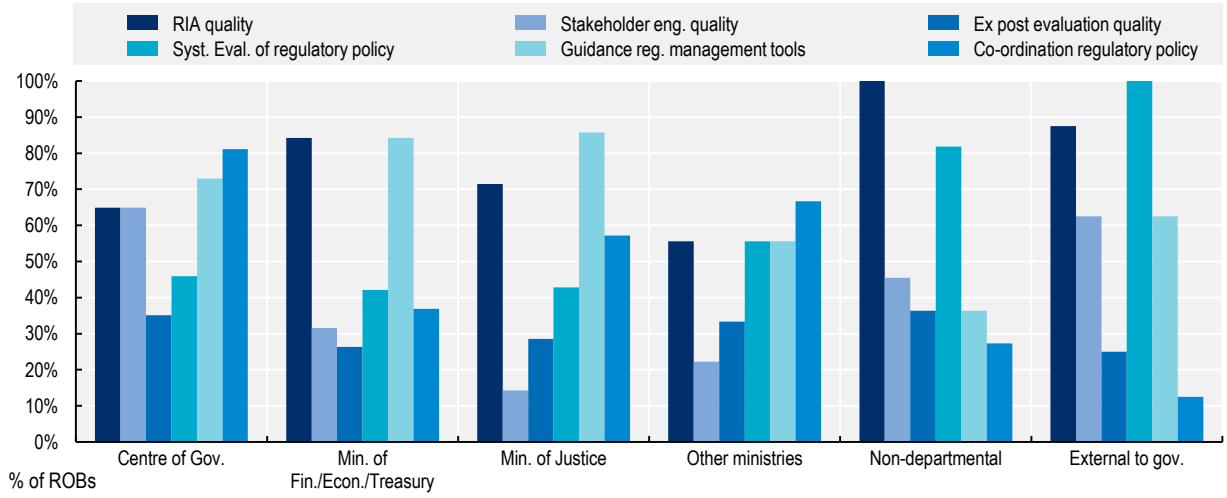
Note: Data is based on 38 OECD member countries and the European Union.
Source: Indicators of Regulatory Policy and Governance Survey 2021.

Regarding the distribution of core functions across locations, the patterns observed in the OECD Regulatory Policy Outlook 2018 still seem to hold true to a large extent. ROBs located at the centre of government are entrusted with a relatively broad range of functions. As may be expected, they are by far the preferred location for functions where centrality is essential, such as coordination-related matters (e.g. promotion of joined up approaches to regulatory quality and the consistent application of relevant tools) and provision of guidance on the use of regulatory management tools. These functions are within the remit of about 80% and 75% of all ROBs at the centre of government respectively.

ROBs in other parts of government also have a diverse range of responsibilities. Those located in Ministries of Economy, Finance or Treasury tend to focus on quality control of regulatory management tools (about 80% of all ROBs in that location scrutinise RIAs) and are also involved in providing guidance and training as well as in identifying potential areas for improvement. ROBs located at Justice Ministries focus on reviewing the legal quality of proposals, although not exclusively: the vast majority of them issue guidance and more than 70% are involved in RIA scrutiny to some extent.

Non-departmental bodies have a clear focus on RIA scrutiny: all of them were reported to have it among their responsibilities. Approximately 45% and 35% of them scrutinise stakeholder engagement and *ex post* evaluations respectively. They are also heavily involved in the systematic evaluation of regulatory policy, as more than three quarters of them have this among their functions. ROBs external to government, in turn, focus on reviewing the quality of regulatory management tools, chiefly of RIA, as well as on the systematic evaluation of regulatory policy and the identification of areas for regulatory improvement. It should be noted that applying a revised definition has notably lowered the proportion of ROBs external to government (mainly in Parliament or part of the Judiciary) that have been considered for analytical purposes compared with 2017.

Figure 3.3. ROBs performing core oversight functions, by location



Note: Data is based on 38 OECD member countries and the European Union. Figures refer to the share (in %) of bodies in a given location performing each core function.
Source: Indicators of Regulatory Policy and Governance Survey 2021.

Institutionalisation of regulatory oversight is also developing beyond the OECD membership. For example, in 2019, Thailand took major steps forward in strengthening their capacity to conduct effective oversight (see Box 3.2).

Box 3.2. Regulatory oversight in Thailand

The Office of the Council of State (OCS) was transformed by the 2019 Act on Legislative Drafting and Evaluation of Law from a legal scrutiny body into a regulatory oversight body. This was part of a broader regulatory reform stemming from the 2017 Constitution of Thailand, which enshrined the requirement to use regulatory management tools into the constitution and was implemented by the 2019 Act.

Positioned in the Prime Minister's Office, the OCS had long served as a "gatekeeper" to the Council of State by providing opinions to the Council on legal quality of draft legislative and regulatory proposals. The new reforms gave them further power to both scrutinise regulatory impact assessments and stakeholder engagements that accompany proposals to the Council, as well as promote the use of these tools across the Government of Thailand through training sessions, advocacy and developing digital tools such as a new consultation platform for new laws (https://lawtest.egov.go.th).

The OECD worked with the OCS to conduct a report (OECD, 2020[5]) assessing their new role as oversight body. The report also provides a set of recommendations to support Thailand in maintaining momentum and iterating the reforms over the medium- to long-term to help cement the role of oversight and use of regulatory management tools.

Source: (OECD, 2020[5]).

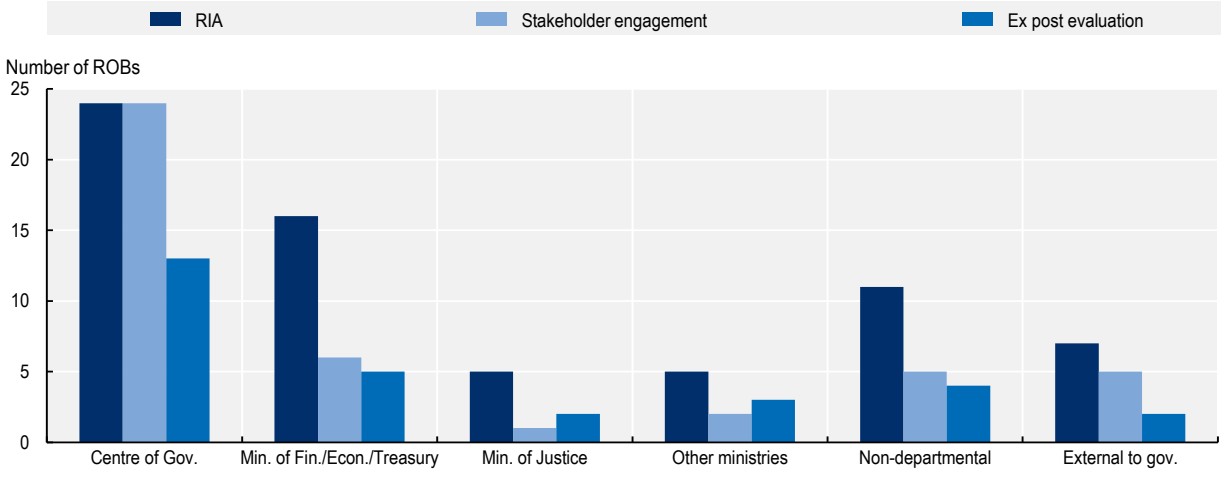
Oversight of regulatory management tools has expanded further, although at varying speeds

This section focuses on quality control of regulatory management tools: RIA, stakeholder engagement and *ex post* evaluation. The analysis on oversight of *ex post* evaluation draws on newly collected variables.

Among the four dimensions covered by the OECD composite indicators, *oversight and quality control* of regulatory management tools, which accounts for the role and attributions of ROBs as well as for publicly available evaluations, appears to be comparatively underdeveloped when considering the 2014-2020 period: over time, this dimension has shown the lowest scores in each composite indicator, which highlights the need for stepping up efforts in this area. Despite recent improvements, *oversight and quality control* scores are particularly low for *ex post* evaluation. Indeed, quality control of both *ex post* evaluations and, to a lesser extent, stakeholder engagement, remains insufficient, as only slow progress has been achieved in recent years. Oversight focus continues to lie primarily with the scrutiny of RIA quality, with the vast majority of jurisdictions having a body in charge of this function.

Figure 3.4 provides an overview of the location of ROBs responsible for quality control of the different regulatory management tools. It reflects the overall distribution of ROBs across locations and confirms the pre-eminence of RIA in terms of coverage that was observed in previous analytical work. For ROBs in charge of quality control, RIA is their main focus (quality control of the other regulatory management tools being rarely dissociated from RIA's), sometimes on an exclusive basis. In the case of ROBs at the centre of Government, quality control of RIA and stakeholder engagement practices related to the development of laws and regulations often go hand in hand.

Figure 3.4. Number of ROBs in charge of quality control, by location and regulatory management tool



Note: Data is based on 38 OECD member countries and the European Union.
Source: Indicators of Regulatory Policy and Governance Survey 2021.

Countries resort to a combination of approaches including support and advice (more widespread) and formal opinions that can in some cases be made public and/or coupled with more stringent sanctioning mechanisms to request that quality be improved.

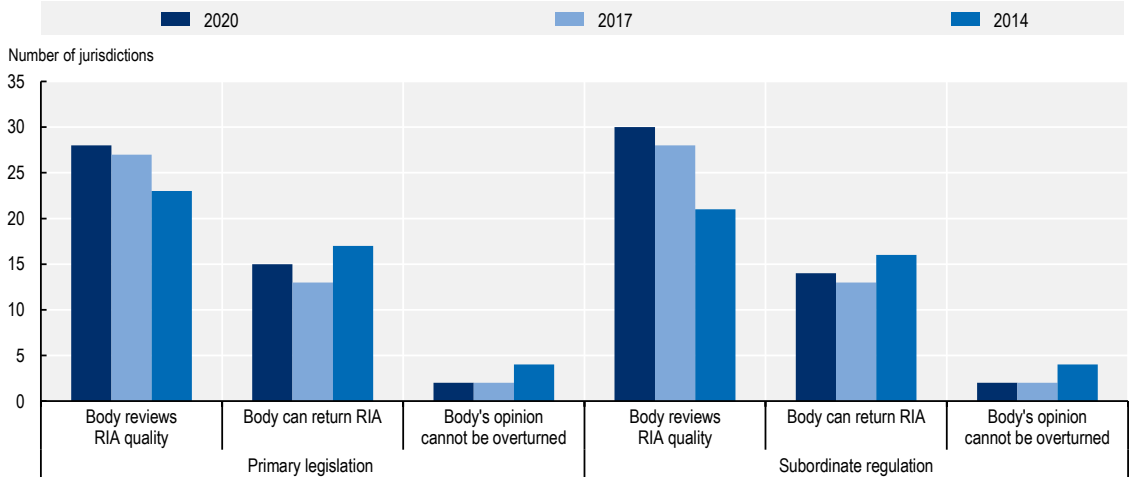
Based on the updates received regarding the mandate of ROBs, the general features regarding the scope and prerogatives of those in charge of quality control of regulatory management tools that were identified in the 2017 survey can still be assumed to apply; i.e. RIA quality control typically focuses on the quality of

evidence (and on costs and impacts on businesses more often than on benefits and impact on citizens[2]) and compliance with applicable rules and procedures, whereas quality control of stakeholder engagement and *ex post* evaluation aims primarily at ensuring that formal and methodological requirements are met.

RIA quality control remains a cornerstone of regulatory oversight, but could be further strengthened by limiting exemptions

As of end 2020, about 80% of jurisdictions declared to have a government body outside the ministry sponsoring the regulation that is responsible for reviewing the quality of RIA. This confirms the central role of RIA scrutiny in oversight systems and, as shown in Figure 3.5, it continues the upward trend observed since 2014, when more than one-third of jurisdictions did not have such a body. Coverage is roughly equivalent for primary laws and subordinate regulation. Approximately 75% of all reported ROBs have RIA quality control among their responsibilities, and about more than 70% of these are located within government. Non-departmental oversight bodies also focus strongly on this function. In addition, about one-quarter of jurisdictions reported having a specific parliamentary committee or other parliamentary body with responsibilities for reviewing the quality of the RIA system as a whole.

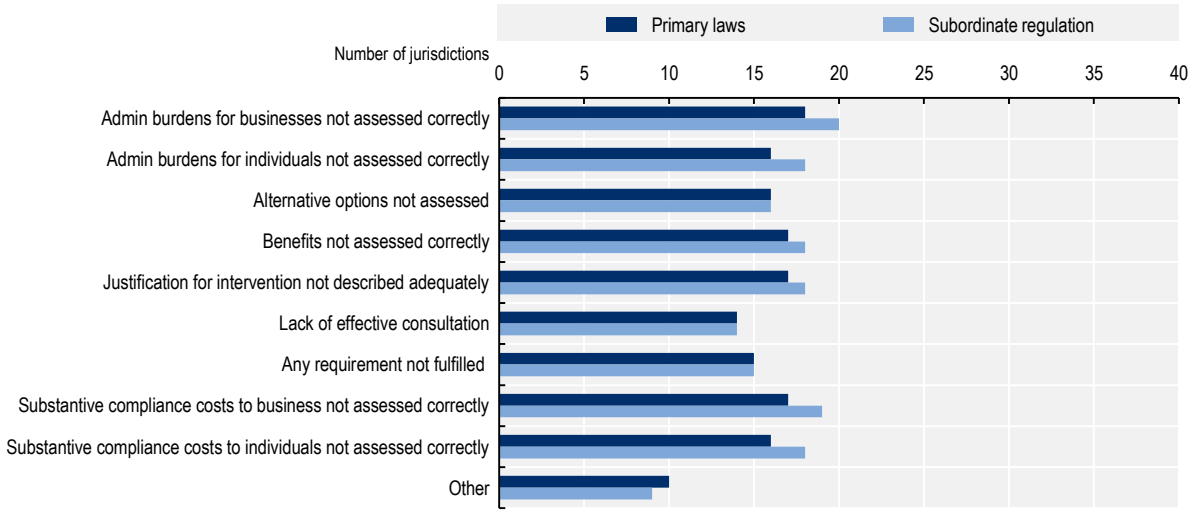
Figure 3.5. Scrutiny of RIA quality (in no. of jurisdictions where each option applies)



Note: Data is based on 34 OECD member countries and the European Union.
Source: Indicators of Regulatory Policy and Governance Surveys 2014, 2017 and 2021.

In just under 40% of jurisdictions (in similar proportions both primary laws and subordinate regulations), the oversight body (or bodies) in charge of RIA scrutiny has some sort of sanctioning power, i.e. it can return the RIA for revision if it deems it inadequate. Figure 3.6 shows the reasons that ROBs can invoke to return a RIA in that case. Cost assessment deficiencies are the most widespread criteria, whereas lack of effective consultation and assessment of alternative options seems to carry comparatively less weight (further details on RIA requirements can be found in the section on Regulatory Impact Assessment earlier in this report). In all but a few cases, this sanctioning power can however be overturned by means of an active decision; e.g. from cabinet, a minister or a high-ranking official.

Figure 3.6. Reasons for returning RIAs (in number of jurisdictions where they are applicable)

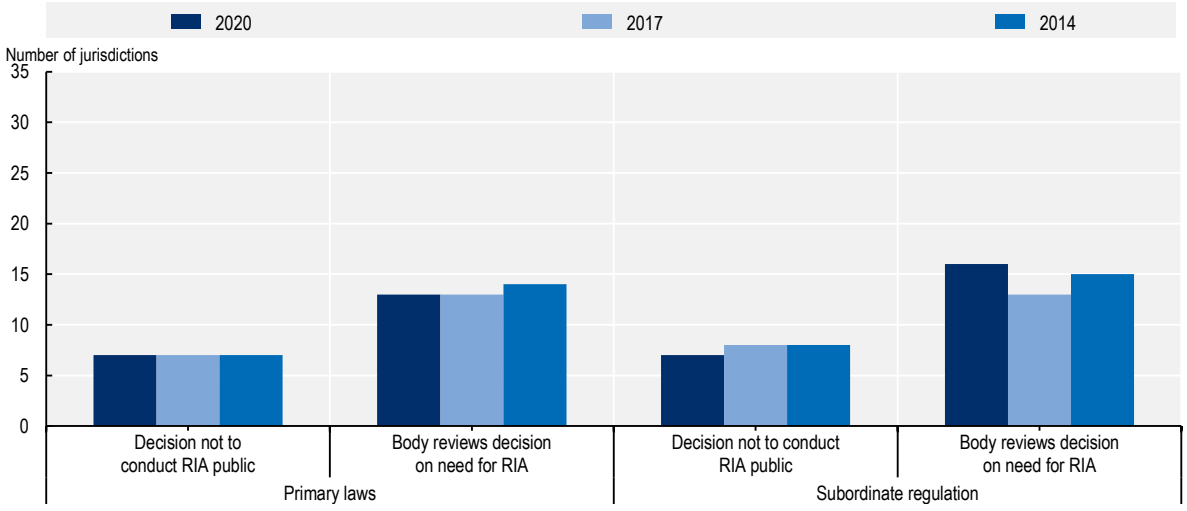


Note: Data is based on 38 OECD member countries and the European Union.
Source: Indicators of Regulatory Policy and Governance Survey 2021.

As far as RIA scrutiny is concerned, the number of jurisdictions in which ROBs have sanctioning power has not increased over the period 2014-2020. These figures do not capture, however, instances where quality control takes place in more consensus-oriented settings (e.g. recommendations from the ROB will be adhered to even if there is no prospect of a formal sanction). In addition, the number of jurisdictions with a ROB in charge of RIA quality control whose mandate is grounded on a legally binding document, which may be considered a proxy for these bodies' influence, has grown from 18 in 2014 to 29 in 2020.

The effectiveness of RIA systems can be undermined in the absence of a systematic and effective obligation for legislative proposals to undergo RIA. If legislative proposals are arbitrarily exempted from *ex ante* impact assessment, or if RIA obligations can be circumvented easily, regulatory quality is bound to suffer. Only a few countries report that RIA is always conducted without exception: Austria, Canada, Estonia, Finland, France, Germany, Korea, Lithuania and Spain (in all but three of them, this applies to both primary legislation and subordinate regulation proposals). Decisions to waive RIA should therefore be exceptional, transparent and subject to systematic scrutiny. This is however an area where there is still room for improvement. As discussed in the Regulatory Impact Assessment section and shown in Figure 3.7, only a minority of OECD members currently publish decisions that RIA will not be conducted where it ought to have been. There also remains nearly two-thirds of OECD members without a body responsible for reviewing the decision made by officials about whether a RIA is required. This means that, in practice, in a majority of OECD members, exception mechanisms can be used to bypass RIA with little scrutiny on whether this decision is appropriate or proportionate to the regulatory proposal at hand.

Figure 3.7. Conditions for scrutiny of decisions not to conduct RIA (in no. of jurisdictions)



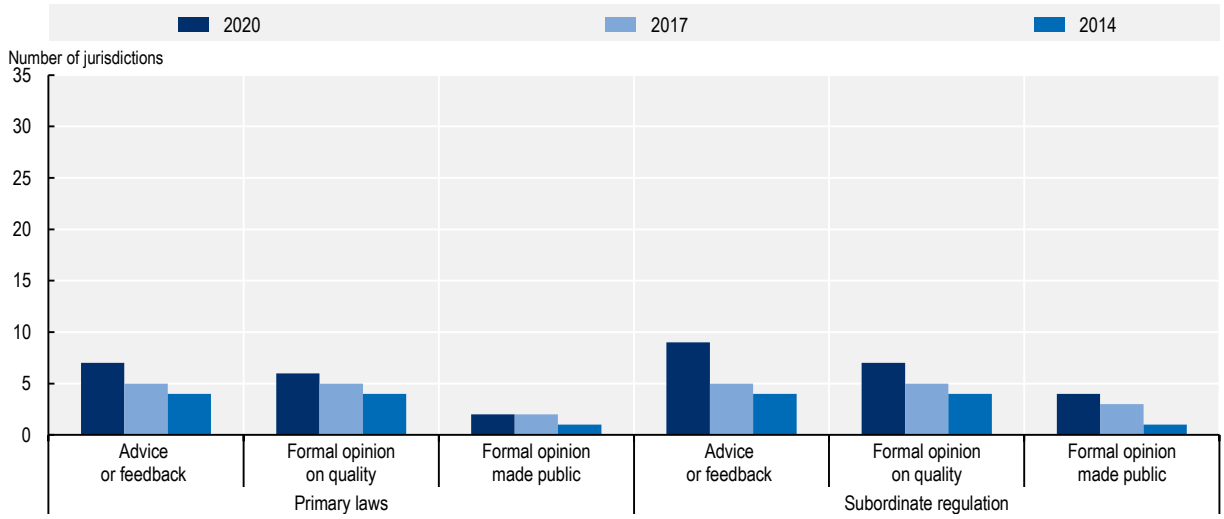
Note: Data is based on 34 OECD member countries and the European Union.
Source: Indicators of Regulatory Policy and Governance Surveys 2014, 2017 and 2021.

Quality control of ex post *evaluation is developing among OECD members, but progress remains slow*

Despite their critical importance for regulatory quality, oversight of *ex post* evaluations remains underdeveloped compared to quality control of RIA. The share of jurisdictions with a body outside the unit conducting the evaluation in charge of reviewing the quality of *ex post* evaluations has grown compared with 2014 for both primary laws and subordinate regulation. However, in both cases, these still account for under one third of jurisdictions. In addition, only a fraction of jurisdictions with a body in charge of reviewing the quality of individual regulations' *ex post* evaluations report to do so for all of them.

Quality control of *ex post* evaluations is generally performed by ROBs at the centre of government, which often share this responsibility with bodies external to government or interdepartmental bodies. In most jurisdictions with a body in charge of reviewing individual regulations' *ex post* evaluations, ROBs provide feedback or advice during the preparation of *ex post* evaluations and also issue formal opinions on their quality. As shown in Figure 3.8, uptake of both these practices has increased in relative terms since 2014, although absolute figures remain low and few OECD members make ROBs' formal opinions publicly available.

Figure 3.8. Methods for quality control of *ex post* evaluations (number of jurisdictions)



Note: Data is based on 34 OECD member countries and the European Union.
Source: Indicators of Regulatory Policy and Governance Surveys 2014, 2017 and 2021.

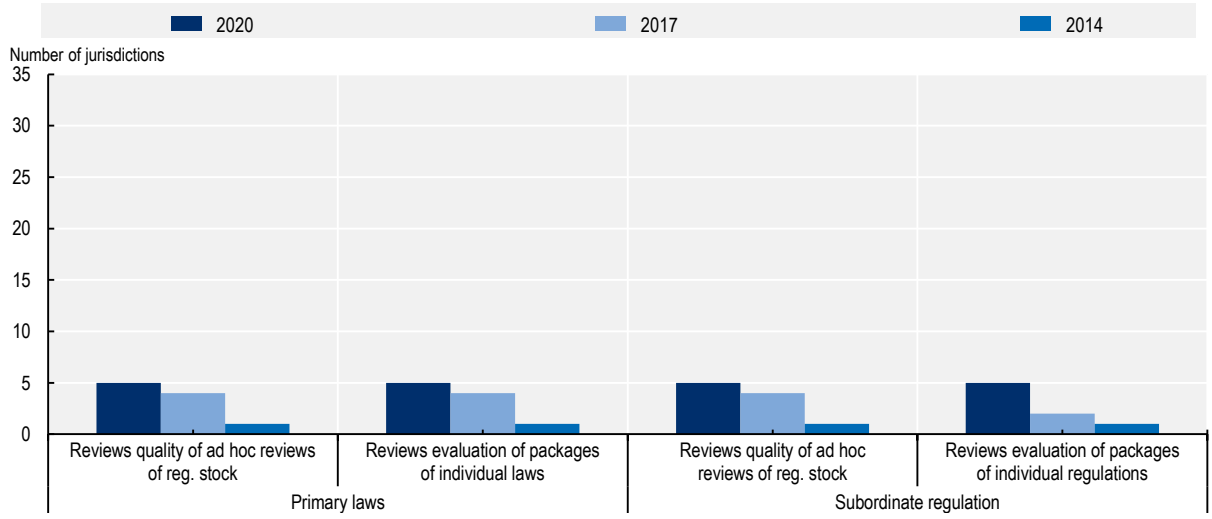
There are promising examples of measures to strengthen oversight of ex post evaluations

Although overall progress in the development of robust and systematic oversight of *ex post* evaluations of regulation remains slow, some OECD members offer promising examples. Germany is one of the countries that have stepped up efforts in this area. In November 2019, the country adopted a more holistic and systematic approach requiring independent quality assurance for all internal *ex post* evaluations and all *ex post* evaluations of legislative proposals exceeding EUR 5 million in annual compliance costs. In the same vein, in 2020 Lithuania institutionalised the *ex post* assessment of regulations and designated the Ministry of Justice as dedicated function for *ex post* evaluation coordination.

When considering the period 2014-2020, some progress can also be observed, in relative terms, in the number of jurisdictions with a dedicated body in charge of reviewing the quality of *ad hoc* reviews of the regulatory stock (e.g. administrative burden reviews or in-depth reviews). The same applies to those with a body responsible for reviewing the quality of *ex post* evaluations of packages of legislation. However, in both cases, and both for primary laws and subordinate regulations, these only represent a small minority of surveyed jurisdictions (see Figure 3.9). Further efforts will thus be required to develop oversight in these areas, which are crucial for ensuring full implementation of the 2012 Recommendation and, ultimately, regulatory quality.

As of end 2020, approximately 30% of jurisdictions declared to have a mechanism (e.g. a body, unit or network) to co-ordinate *ex post* evaluation efforts across the public administration from a whole-of-government perspective, thus signalling their awareness of the importance of joined-up approaches for ensuring laws and regulations remain relevant and fit for purpose.

Figure 3.9. Quality control of *ad hoc* reviews of regulatory stock and packages of legislation (number of jurisdictions)



Note: Data is based on 34 OECD member countries and the European Union.
Source: Indicators of Regulatory Policy and Governance Surveys 2014, 2017 and 2021.

More systematic quality control is needed to ensure the effectiveness of stakeholder engagement practices

In about 60% of jurisdictions, regulators are formally required to consider consultation comments when developing the final regulation (see section on stakeholder engagement earlier in this report for more details). This proportion applies to both primary laws and subordinate regulation. A common approach to ensuring accountability in this regard consists of requiring a review by a standing or central body to oversee that related practices are up to standard. About half of the jurisdictions with formal requirements on stakeholder consultation declared to have such a mechanism – again, in similar proportions for primary laws and subordinate regulation. Quality control of stakeholder engagement activities in this context is often carried out by ROBs at the centre of government (more than 60% of them have it in their mandate), sometimes with the involvement of bodies external to government or non-departmental bodies. In only a handful of cases are regulators held accountable by means of judicial reviews. For both approaches, uptake has remained stable compared with 2017.

ROBs can help to enhance substantially the performance assessment of regulatory management tools, which is still not fully transparent or systematic

The OECD Recommendation of the Council on Regulatory Policy and Governance stresses the importance of assessing the functioning of regulatory management tools as part of governments' efforts to evaluate the performance of regulatory policy. Principle 6 of the Recommendation encourages members to publish regular reports on the performance of regulatory policy and reform programmes and the public authorities applying the regulations, including information on how regulatory tools such as RIA, public consultation practices and reviews of existing regulations are functioning in practice. In the same vein, the OECD has developed a Framework for Regulatory Policy Evaluation to assess the success of regulatory policy in achieving policy objectives in the most efficient manner and bringing about improvements in growth and societal welfare (OECD, 2014[6]). ROBs have a decisive role to play in this context. In addition to engaging in evaluative work in their own right, they can notably promote concerted approaches across the public administration to ensure that relevant information already produced by regulatory management

systems is collected systematically as indicators, and that measurement and assessment efforts encompass all relevant domains of regulatory reform instead of focusing only on certain aspects such as the cost of complying with administrative obligations (Radaelli and Fritsch, 2012[7]).

OECD members still need to step up their efforts to develop comprehensive monitoring and evaluation mechanisms for regulatory management tools. Although RIA is a cornerstone of regulatory management in most countries, performance measurement of this tool is still not fully transparent or systematic. Approximately one third of jurisdictions still do not publish online reports on the performance of their RIA system and in many of them reporting is not regular but *ad hoc* (see Table 3.1). In the same vein, monitoring the appropriate functioning of RIA systems by means of performance indicators or opinion surveys is still very far from being commonplace.

Table 3.1. Monitoring and assessment of RIA systems (in no. of jurisdictions)

	2020
Reports on RIA system performance: Annually	9
Reports on RIA system performance: Every 2-3 years	3
Reports on RIA system performance: *Ah hoc*	12
Track percentage of RIAs that comply with formal requirements/guidelines (internally)	4
Track percentage of RIAs that comply with formal requirements/guidelines (made public)	11
Conduct opinion surveys on the usefulness/quality of RIA (internally)	1
Conduct opinion surveys on the usefulness/quality of RIA (made public)	3

Note: Data is based on 38 OECD member countries and the European Union.
Source: Indicators of Regulatory Policy and Governance Survey 2021.

The need for improved monitoring and evaluation is even stronger for the other two regulatory management tools. Assessing the effects of *ex post* evaluations of regulation are particularly valuable to identify areas for improvement and reform. Their usefulness is notably illustrated by the work carried out by the EU's Regulatory Scrutiny Board to draw forward-looking conclusions from its scrutiny of *ex post* evaluations, both from a methodological (e.g. recurrent design flaws) and an institutional perspective (e.g. potential biases and conflicts of interest) (Regulatory Scrutiny Board, 2019[8]).

However, only a handful of jurisdictions assess the effectiveness of *ex post* evaluations in improving the regulatory stock. In 2020[3], less than one-fifth of them declared to have done so in the previous five years and made findings publicly available. In the same vein, there are still few instances of reports being published online on the performance of the *ex post* evaluation system (i.e. to understand how it functions in practice) and many of them are not systematic. Moreover, the vast majority of jurisdictions do not use indicators on the percentage of *ex post* evaluations that comply with formal requirements/guidelines or opinion surveys to monitor the usefulness or quality of *ex post* evaluations. Although these figures are partly explained by the fact that relatively few countries undertake *ex post* evaluation on a systematic basis, the current level of effort remains insufficient.

Monitoring and evaluation of stakeholder engagement has not progressed in recent years either and it remains underdeveloped. Approximately one third of jurisdictions publish reports on the performance of consultation practices on improving draft regulations, nearly always on an *ad hoc* basis. Only seven jurisdictions reported to collect indicators on the percentage of consultations that comply with formal requirements or guidelines, and only three collect indicators on the results of surveys on the usefulness or quality of stakeholder consultations. Moreover, only the European Union declared to evaluate consultation of foreign stakeholders.

Previous OECD work focusing on EU Member States (OECD, 2019[9]) highlights that, although members rarely review the performance of their consultation systems and how they work in practice, evaluations have demonstrated that they can be a powerful tool when performed. Indeed, these evaluations provide insights to improve the effectiveness and ultimately also the acceptance of consultation channels amongst stakeholders. The Netherlands, for example, have reviewed the extent to which their online consultation system was valued by citizens, companies, and departmental staff, as well as whether the objectives of the legislative process were being achieved. Review results have also served to identify weaknesses in the consultation system, such as the relative lack of visibility for citizens and businesses as to how their inputs are taken into account. The European Commission, in turn, reviewed its stakeholder consultation practices prior to updating its consultation system in 2015 and, subsequently, in 2018-2019 as part of a broad-based stocktaking exercise on its commitment to Better Regulation (European Commission, 2019[10]).

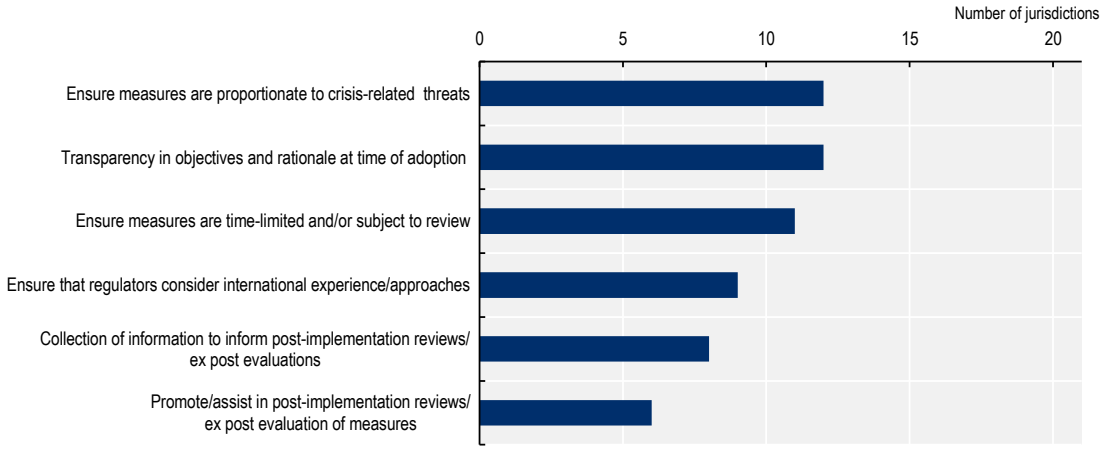
Seamless coordination, adaptability and a holistic approach that creates buy-in are essential for effective regulatory oversight

Well-functioning regulatory oversight is crucial to bridge the gap between political commitments and formal requirements on the one hand and effective implementation on the other hand. In addition, it is necessary to ensure a whole-of-government approach and thus the effective uptake of the 2012 Recommendation in its entirety. Under the current, rather exceptional circumstances, ROBs have an essential role to play in ensuring transparency in emergency rulemaking as well as due scrutiny. In addition, they can also contribute to a sustainable economic recovery by ensuring that regulatory decisions are forward-looking.

Previous sections in this chapter refer to the importance of seamless coordination and well-conceived institutional arrangements obeying to efficiency and complementarity criteria to avoid unnecessary overlaps and fragmentation. It is equally important that ROBs can adapt timely to emerging needs and challenges, such as those stemming from rapid technological change and global threats, in order to help address them. Survey data show that a number of governments are taking steps in this direction. Almost half of jurisdictions declared to have at least an oversight body focusing on innovation-friendly regulation, e.g. by helping ministries and regulators take into account impacts of regulation on innovation. Moreover, nine ROBs have expanded their scope of intervention to cover additional areas (e.g. regulation of new technologies) and seven have otherwise had their mandate adjusted (in most cases, to adapt to changed institutional settings or improve workflows). In the same vein, about 40% of jurisdictions reported having a body in charge of overseeing regulatory quality during a crisis, for instance in the context of emergency rulemaking (see Figure 3.10 for further details).

The growing complexity and uncertainty levels affecting decision-making mean that ROBs need sufficient capacity to anticipate risks and understand potential innovation pathways and outcomes. The European Commission, for example, has decided to embed strategic foresight into its working methods (including to inform the design of new initiatives and the review of existing ones), and the mandate of its ROB, the Regulatory Scrutiny Board (RSB), has been expanded to include foresight (European Commission, 2020[11]). ROBs can indeed play a decisive role in promoting innovative approaches to regulatory policy and contributing to bring about the necessary changes in terms of institutional culture and mind-sets. Several developments at the country level are worth highlighting in this regard (see Box 3.3).

Figure 3.10. Areas reported to be covered by ROBs in charge of regulatory quality during the COVID-19 crisis



Note: Responses may relate to particular legislative arrangements within OECD members and should not be used as an indicator of the level of government intervention nor as an indicator of the severity of the COVID-19 pandemic. Data are self-reported by 21 OECD members generally as of 18 September 2020. The situation regarding covered areas may have evolved since that date.
Source: Indicators of Regulatory Policy and Governance Survey 2021.

Box 3.3. Examples of ROBs' innovative practices

In **Canada**, the Treasury Board has called upon the External Advisory Committee on Regulatory Competitiveness for advice and recommendations for "supporting the modernisation of Canada's regulatory system into one that further enables investment and innovation", including by "championing the use of pilots".

Since 2017, the **Norwegian Better Regulation Council** has taken steps to scrutinise if regulatory proposals are innovation-friendly (e.g. 2019 statement on a set of proposed new rules governing the use of drones).

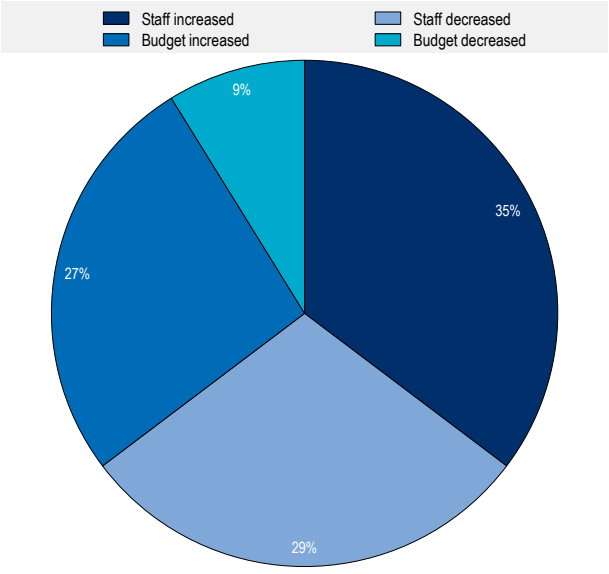
The goal of **Denmark**'s digital-ready legislation agenda is to "cut red tape by simplifying legislation and integrating public case processing and technology". Unnecessary and complex legislation should be simplified and new legislation should be easily understandable and digitally compatible. To that end, the Danish Agency for Digitisation has issued Guidance on digital-ready legislation. In the same vein, a **Secretariat for digital-ready legislation** has been created. Its main purpose is to ensure that the public implementation impacts are properly described in new legislation and legislation is digital-ready.

In the **UK**, the **Regulatory Policy Committee** will be invited to scrutinise the application of an innovation test (under development at the time of writing), to "ensure that the impact of legislation on innovation is considered during the development of policy, introduction and implementation of legislation and its evaluation and review". Moreover, the country's White Paper on "Regulation for the Fourth Industrial Revolution" notably examines how the institutional framework needs to evolve to enhance regulatory oversight in areas relating to technological innovation.

Source: OECD Indicators of Regulatory Policy and Governance (iREG) survey, 2021, (Denmark's Agency for Digitisation, 2020[12]), (Government of Canada, 2019[13]), (UK Government, 2019[14]).

Appropriate execution of regulatory oversight functions also requires appropriate resourcing, especially in light of the above-mentioned additional needs in terms of analytical capacity. Reporting in this respect is however neither comprehensive nor fully standardised.[4] Therefore, currently available evidence does not allow determining the extent to which resources at the disposal of ROBs are commensurate to either needs or the challenges they face. According to 2020 data (see Figure 3.11), across all jurisdictions, 23 ROBs reported changes in either financing or staff. In real terms, nine ROBs had their budget increased over the reporting period and three indicated that it had decreased. Staff numbers, in turn, grew for twelve ROBs and diminished for ten of them.

Figure 3.11. ROBs reporting changes in budget and/or staff endowments



Note: Data refer to 23 ROBs reporting changes in either financing or staff during the reporting period.
Source: Indicators of Regulatory Policy and Governance Survey 2021.

By promoting a coordinated and comprehensive approach to analysis, providing ongoing support and creating buy-in, ROBs can make a difference for regulatory quality

In addition to the institutional design elements and related requirements discussed earlier in this chapter, there are other factors that, while generally harder to track and measure given the “intangible” nature of some of them, should not be overlooked if regulatory oversight is to be effective. These factors include ROBs’ legitimacy and credibility as well as their influence and ability to elicit buy-in from those involved in better regulation across government through upstream work and the provision of ongoing guidance, advice and support.

In Portugal, for example, the Technical Unit for Legislative Impact Assessment (UTAIL) has developed strong and productive relationships with government officials involved in RIA, from high-level officials to technical staff. UTAIL is also responsible for RIA capacity building across the public administration (including methodological guidance) and carries out important upstream work in that capacity. Its advice is valued by members of the executive, which contributes to the development of better regulation in Portugal. UTAIL’s advice and networking efforts are also paying off in terms of the RIA procedure itself: while having no formal power to alter assessments whose analytical quality is deemed insufficient, in practice it is able to use its good relations and expertise to find compromises with the analytical services.

Australia's Office of Best Practice Regulation (OBPR), in turn, offers valuable examples of how ROBs can support a coordinated and comprehensive approach to analysis and work upstream to demonstrate the value of better regulation tools for ministries across government (see Box 3.4).

Box 3.4. Australia's Office of Best Practice Regulation: a holistic and responsive approach to oversight

To maximise RIA's ability to identify the pathway to policy solutions with robust analysis of trade-offs, costs and benefits (and thus its influence), OBPR focuses on two areas: scanning efforts to identify upcoming proposals that require RIA, as well as proactive engagement with Ministries on the benefits of RIA. It uses information flows, decision-making processes of government, and its central position in the Department of the Prime Minister and Cabinet to assess if RIA is required for over 1 500 unique new proposals each year. However, much more effort is dedicated to the OBPR's capacity-building focus. In 2019-20, it delivered over 2 250 structured training hours to public servants on how to conduct robust impact analysis and evidence-based decision making - in addition to emails, calls and meetings to provide agencies with the support and skills to produce high-quality impact analysis.

This support often involves the OBPR working with Ministries to identify the broad range of economic, social and distributional impacts of proposals before preferred options are settled. Using RIA early as a practical policy framework tool enables Ministries to consider the cumulative impacts of proposals. It also enables Ministries to consider how different policy levers interact with each other, well before a policy nears a decision point. This enables more interrogation of innovative options and discourages a siloed or narrow approach to solving policy problems: rather, it helps to focus on policy options that deliver net benefits to the community.

While it is a non-negotiable requirement that RIA is undertaken for all major decisions of the Government, the OBPR's lived experience shows that Ministries who see value in using the RIA framework will generate higher quality impact analysis compared to Ministries who aim for minimum RIA expectations. From the earliest stages of policy development, the OBPR works with Ministries to identify the costs and benefits of options to solve policy problems, often with rapid response times. Where proposals have major impacts on business, individuals, or community organisations, it actively supports Ministries to develop in-depth analysis to inform decision-makers and adopts an agile approach to suit the support required. Assistance can take the form of interactive workshops, drafting advice on early analysis, or short-term secondments. As a result, Ministries are not only encouraged to adopt RIA, but are supported by the OBPR in practice. The OBPR also often works post-RIA, to partner with Ministries to showcase their analysis internally with their colleagues, and share lessons learnt and RIA tips.

Source: Exchanges with Australia's Office of Best Practice Regulation (OBPR).

Results-oriented and systematic performance assessment holds the key to improving regulatory oversight

Maximising the value added of regulatory oversight processes and structures in the years to come will require a thorough understanding of their performance as well as its underlying factors. Despite promising examples and new opportunities offered by emerging analytical tools and methods, there is still much to be improved in that respect.

As of end 2020, approximately two-thirds of jurisdictions indicated that reports were prepared on the effectiveness of at least one ROB responsible for quality control of regulatory management tools; e.g. containing information on its activities, the fulfilment of its mission, or results of perception surveys on its

performance and value added. The vast majority of them declared to publish those reports. In most cases, reporting takes place on an annual basis.

Generally, there continues to be relatively scant evidence on the impacts of regulatory oversight on regulatory improvement, let alone broader policy goals. Among other reasons, this owes to the fact that ROBs' reporting activity focuses primarily on implementation (e.g. number of items scrutinised, turnaround times) and conformity with formal requirements (which tend to be easier to track and measure) rather than effectiveness and outcomes.

Certain jurisdictions are however showing the way by deploying considerable efforts to monitor and evaluate the results of their ROBs' work. In its 2019 annual report, the Norwegian Better Regulation Council published performance indicators seeking to capture, among other aspects, the effect of the Council's statements in which it had deemed RIAs not to be fit for purpose. This report also included and assessment of the general trends and developments regarding RIAs within the Council's remit and any recurring problems, as well as an overview of the Council's guidance and information activities to foster effective regulations. Mexico's CONAMER, has in turn developed an "indicators for results" approach encompassing indicators to assess its contribution to reducing regulatory burden (Comisión Nacional de Mejora Regulatoria, 2019[15]). In Korea, white papers for Regulatory Reform are published on an annual basis including a regulatory reform satisfaction index, and the EU's Regulatory Scrutiny Board publishes key performance indicators including on quality improvements subsequent to interactions with European Commission services in its oversight capacity.

Moreover, as discussed in OECD case study work (OECD, 2018[3]), a number of non-departmental bodies use surveys to collect feedback on the quality and impact of their work. Moreover, in some jurisdictions ROBs must undergo external evaluation on a periodic basis. Box 3.5 presents selected examples of both practices.

Box 3.5. Selected examples of assessment of ROBs' work

The **UK's Regulatory Policy Committee** conducts a quarterly survey of departments and regulators who have submitted cases to offer feedback on their service received and the quality of the opinion returned to them. In a similar vein, the **Swedish Better Regulation Council** surveys ministries' and government agencies' perception of the Council's opinions and their impacts and makes the information available in its annual reports. The Dutch Advisory Board on Regulatory Burden (ATR) also gathers feedback from mechanisms, e.g. on the fast-track procedure it introduced in 2019 (ATR, 2019[16]).

In some jurisdictions, ROBs must undergo external evaluation on a periodic basis. For example, under Dutch law, the oversight body must be evaluated every four years. These evaluations have informed adjustments to the body's mandate over the past two decades. Furthermore, the mandate of **ATR** was designed based on an evaluation by two independent researchers. In the **UK**, the **National Audit Office** and the **Public Accounts Committee** produce independent reports and studies on the evidence and analysis around regulatory measures, including an assessment of the effectiveness of the institutions involved in the development of regulatory policies. Moreover, the **Swedish Agency of Public Management** carried out assessments of the Swedish Better Regulation Council in 2012 and in 2018, in view of a possible mandate change.

Source: (OECD, 2018[3]).

In addition, there are promising examples of how new technology-based solutions and analytical tools can help improve our understanding of ROBs' performance and its determining factors in order to maximise the value added of regulatory oversight processes and structures. A recent study, for example, uses supervised machine learning algorithms to identify major change requests in RSB opinions and text similarity measures to identify changes between draft and final versions of impact assessment reports (see Box 3.6).

Box 3.6. "Meet the critics: Analysing the EU Commission's Regulatory Scrutiny Board through quantitative text analysis": a promising approach to impact evaluation of ROBs

In their study, Roman Senninger and Jens Blom-Hansen, both of Aarhus University, analyse the impact of the Regulatory Scrutiny Board on the European Commission's policy preparation process. Using machine learning techniques and quantitative text analysis, the study examines RSB opinions on all draft impact assessment reports from the period 2010–2017 (673 in total) and compares almost 100 draft and final policy proposals.

It concludes that the RSB is an "active watchdog" insofar as "it seems to apportion its critical scrutiny evenly in the Commission system" and "no units seem to be spared". It also concludes that the RSB is "taken seriously" by the Commission's departments, as "the more changes the RSB asks for, the more the draft impact assessment reports are changed by the responsible department". However, it points out that this result mainly holds if the RSB's overall judgment is negative (it can ask for major changes in draft reports but still adopt an overall positive judgment, in which case the responsible Commission department does not need to submit a revised report and can proceed).

The study highlights a number of caveats and limitations as well as areas deserving further investigation. For example, the analysis does not directly show whether or how the RSB influences the substance of policy proposals or their success (but just how RSB's opinions influence the formulation of impact assessments), and it does not examine the type of changes requested or the parts of the impact assessment that are the most thoroughly revised. Additional aspects worth exploring in future include less formal interactions (e.g. physical meetings, oral exchanges) and additional factors (e.g. political context) determining the extent to which departments revise impact assessments thoroughly.

Source: (Senninger, 2020[17]).

In the same vein, Australia's OBPR are developing a bespoke IT system for RIA aimed at improving workload management related to RIA scrutiny (e.g. via automated processes, enhanced information management and system notifications for better work prioritisation) as well as the quality of impact analysis advice. This system is expected to provide a system-wide perspective by capturing a richer set of data and allowing for reporting and analysis of aggregate data (e.g. to identify recurrent issues in RIAs from a given ministry and tailor capacity building accordingly). Crucially, it is conceived to help OBPR understand what kind of feedback is more effective at each stage of the policy cycle and target their efforts accordingly. By doing so, the system can also contribute to improving impact analysis across Government.

It could be extremely valuable to exploit the full range of opportunities offered by emerging analytical tools and methods, such as those illustrated by the above-mentioned examples, to improve the better regulation community's understanding of ROBs' impact and, ultimately, enhance regulatory quality.

Notes

[1] Approximately one third of jurisdictions also reported the existence of networks of regulators that are involved in the exchange and dissemination of good regulatory practices. These networks are however not considered for analytical purposes here.

[2] As discussed later in this section, cost assessment deficiencies are the most widespread criterion allowing oversight bodies to return RIAs for review. This can be considered a proxy for their relative importance in RIA oversight mechanisms.

[3] Based on data from 38 OECD member countries and the European Union.

[4] For example, in the 2017 OECD survey on regulatory oversight bodies, data on resources were only reported for about half of all ROBs in charge of quality control functions. In addition, comparison is not straightforward given that in some cases figures were reported for an entity as a whole rather than actual oversight functions.

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4 Rethinking rulemaking through international regulatory co-operation

This section outlines the key trends in International Regulatory Co-operation (IRC) across OECD Member countries, building on the relevant 2021 OECD Survey of Regulatory Policy and Governance (iREG) questions and recent developments identified in OECD analytical and country work. It shows a steady increase in the consideration of internationally agreed instruments in domestic rulemaking. Nevertheless, overall progress on IRC is still lagging behind the increasingly needs for cross-border regulatory action. The COVID-19 pandemic and other challenges such as climate change underscored the importance for countries to co-operate rapidly and strengthen their international regulatory co-operation capacities before crisis hit, to be mobilised in time in the face of transboundary emergencies.

Key findings

- **The complex and interconnected policy challenges that countries across the world are facing today, such as those raised by the COVID-19 pandemic and climate change, have increased the urgency for international regulatory co-operation to support domestic rulemaking in areas where cross-border efforts are critical.** This need was already present before the crisis and is now starker than ever. The pandemic underscored the importance for countries to co-operate rapidly and strengthen their international regulatory co-operation capacities before crisis hit, to be mobilised in time in the face of transboundary emergencies (OECD, 2020[1]). Still, results from the 2021 iREG show that progress on this front still lags behind emerging needs.
- **Countries increasingly include international considerations in their rule-making cycle via regulatory policy tools, but the trends suggest a largely "pick-and-choose" approach to IRC.** The 2020 iREG survey confirms an upward trend of countries either systematising consideration of international instruments, considering international evidence or accounting for international impacts in the domestic rulemaking process, as illustrated by the OECD Reviews of International Regulatory Co-operation of Mexico and the United Kingdom (OECD, 2018[2]) (OECD, 2020[3])). However, a systematic approach to embedding considerations of the international environment in domestic rulemaking is yet to be fully realised in the majority of OECD countries. The *OECD Best Practice Principles on International Regulatory Co-operation* (OECD, 2021[4]) support countries in addressing this fragmentation, by recommending a unified and compelling narrative around IRC to promote regulatory quality embodied in a whole-of-government policy and a supporting co-ordination mechanism. However, iREG data confirms that a whole-of-government IRC policy remains an exception among countries, and oversight on IRC activities mostly continues to be shared among several central government bodies.
- **Innovative technologies today know no borders, whereas regulation remains largely confined within traditional national boundaries**. The interconnections resulting from digitalisation and transformative technologies more broadly put increasing pressure on traditional regulatory frameworks, showing the limits of purely unilateral approaches (OECD, 2019[5]). IRC is key to ensure that regulations effectively protect citizens against the risks and harms of these technologies, while at the same time preventing undue innovation costs for business. Better IRC can prevent companies from avoiding compliance and encourage a "race to the top" among governments with better and more effective joint approaches. The *OECD Draft Recommendation on Agile Regulatory Governance to Harness Innovation* under preparation by the OECD Regulatory Policy Committee will support regulators in adapting their regulatory processes to the interconnected, digitalised and innovation-driven global economy.
- **Increasing international commitments are being made to use IRC and good regulatory practices (GRPs) to reduce unnecessary barriers to trade, creating an additional impetus to strengthen regulatory quality and coherence.** IRC is viewed as an important mechanism to reduce the unnecessary trade costs arising from regulatory divergences among trading partners (OECD, 2017[6]). GRPs and IRC are therefore increasingly leveraged in bilateral, regional and multilateral agreements. The WTO Agreements on the Application of Sanitary and Phytosanitary measures (SPS) and Technical Barriers to Trade (TBT) create a comprehensive transparency framework (OECD/WTO, 2019[7]) that was used extensively at the height of the COVID-19 crisis to improve the predictability of regulatory changes and facilitate international trade (OECD, 2020[1]). There is also a growing number of dedicated chapters in trade agreements setting commitments on GRPs, international regulatory co-operation, or both (Kauffmann and Saffirio, 2021[8]). A corollary to these international commitments is the

assessment of trade impact in RIAs at the domestic level (OECD, 2018[2]) (OECD, 2020[3]). Specific methodologies are emerging for estimating the impacts of regulatory drafts on international trade, which support efforts to reduce regulatory divergences. In certain cases, these impact assessments are connected to international notification processes, enabling more effective dialogue and regulatory co-operation.

- **Countries could further expand their use of IRC to address policy challenges beyond trade**. Country-level analysis confirms that knowledge of systematic IRC practices remains relatively low across regulators and policy makers, except in selected policy areas or among trade policy authorities (OECD, 2018[2]) (OECD, 2020[3]). Nevertheless, analytical work confirms that IRC is a critical tool for achieving national and international policy objectives well beyond trade liberalisation. This is particularly applicable to addressing cross-border policy challenges, such as those related to the environment. Long-standing IRC efforts to address transboundary air pollution provide a good example of this (OECD, 2020[9]). Recent OECD research predicts that co-ordinated policy action between China, Korea and Japan would result in the implementation of the best available techniques in the three countries, leading to more significant air quality improvements than purely national approaches and lowering citizens' exposure to air pollution (Botta et al., 2021[10]). IRC can allow regulators to address challenges at the right level of governance, limit unnecessary frictions and divergences among regulatory frameworks, pool administrative resources, and broaden the evidence base for regulation (OECD, 2013[11]).

Introduction

The COVID-19 pandemic has stressed the need to embed IRC in regulatory frameworks *ex ante*, to be relied on during transboundary emergencies. IRC is essential for policy makers and regulators to rapidly address together common threats and, in the case of COVID-19, to eradicate the virus across countries. IRC can ensure mutual learning on issues such as vaccine development, support resilience of supply chains and enable the availability of essential goods including key medical products, and facilitate the interoperability of services and cross-border activities such as telecommunications or transportation. Yet the crisis reveals a disconnect between the growing cross-border nature of policy challenges and the traditional national scope of laws and regulations – the key tools of policy making along with taxation and spending. Acting under pressure and facing time constraints, the immediate country reactions have often been unilateral, seeking national and sub-national solutions and even isolationism to protect populations from a threat perceived as largely coming from outside (OECD, 2020[1]).

IRC is anchored in the *2012 OECD Recommendation on Regulatory Policy and Governance*, illustrating its importance for regulatory quality and effectiveness (OECD, 2012[12]). OECD work has identified several ways that countries can implement this principle, including the systematic consideration of international instruments in the development of regulation, opening consultation processes to foreign parties, embedding consistency with international standards in *ex post* evaluation, and establishing a co-ordination mechanism in government to centralise relevant information on IRC. These practices were already monitored in the *OECD Regulatory Policy Outlook 2018*. This showed that, while increasingly recognised by countries as relevant for regulatory quality, only a few have a cross-governmental vision of IRC and its governance remains highly fragmented. This edition of the Regulatory Policy Outlook examines how these practices have advanced and captures new IRC developments across OECD countries. It also highlights a number of IRC efforts that were instrumental for countries to address policy challenges linked to the COVID-19 pandemic (OECD, 2020[1]).

The OECD Regulatory Policy Committee has recently developed a set of *Best Practice Principles on International Regulatory Co-operation* to provide guidance for regulators on how to better implement Principle 12 of the Recommendation in support of regulatory quality. The Best Practice Principles are organised around three pillars: i) Establishing an IRC strategy and its governance; ii) Embedding greater IRC considerations in domestic rulemaking; and iii) Engaging in international co-operation at the bilateral, regional and multilateral levels (OECD, 2021[4]). This chapter draws upon new data from iREG to map regulatory requirements and practices against these pillars. Building on the work of the IO Partnership, it also identifies recent efforts to improve the quality and effectiveness of international rule-making activities.

Governance of IRC

International regulatory co-operation (IRC) is multifaceted, implemented via a variety of processes and actors, both nationally and internationally. A whole-of-government strategy to ensure international considerations are systematically embedded within domestic rulemaking procedures by all relevant actors responsible for developing, overseeing or implementing domestic regulations can thus strongly benefit IRC efforts (OECD, 2021[4]).

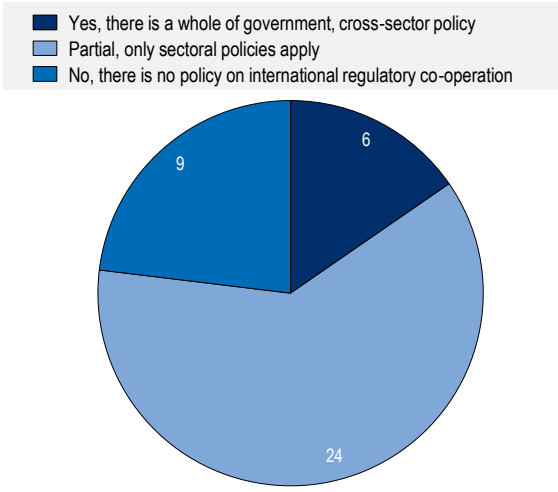
A well-functioning IRC policy can be defined as a systematic, national-level, whole-of-government policy/strategy promoting international regulatory co-operation, whether reflected in a broad strategic document or other instrument (OECD, 2021[4]). Only six respondents have a comprehensive whole-of-government policy and related guidance, despite the recognised importance of such a policy for effective IRC practices. The examples of different IRC policies confirm that these may have a varying scope and legal underpinnings, ranging from statutory obligations to softer approaches (Box 4.1).

In addition, while few countries have a systematic whole of government IRC policy, a significant share of respondents have a “partial” IRC policy, only applying to certain sectors, limited geographically to neighbours or a specific region, or even a specific type of co-operation. The European Union Member countries, in particular, rarely have a whole-of-government policy related to IRC, even though their regional regulatory co-operation is strongly reflected in their national regulatory processes due to their membership of the bloc. The European Union remains the most ambitious regional regulatory co-operation framework involving supra-national regulatory powers. Member countries of the European Union therefore intrinsically have an active regulatory co-operation mechanism built into their regulatory processes by virtue of their membership obligations and of the Treaty on the Functioning of the European Union (OECD, 2018[13]). These policies can be considered as “partial” IRC policies, given their geographical limitation to regional partners (Figure 4.1). The European Commission itself, however, does reference IRC within its “Better Regulation Agenda”. This ensures that IRC is considered when new initiatives and proposals are prepared and when existing legislation is managed and evaluated at the European level.

A few countries have “partial” IRC policies, in that they are only limited to one form of international instrument – typically binding international law or international standards. However, it is important to note that the “partial” scope of such an IRC policy can still be a useful basis to integrate national and international frameworks. For example, in Germany, Article 25 of the German Constitution represents a “partial” legal basis on IRC to the extent that it incorporates certain international instruments, i.e. “the general rules of public international law”, as an integral part of federal law. In addition, the German Constitutional Court has developed a principle of *Völkerrechtsfreundlichkeit (*friendliness to international law*)* according to which the German Basic Law “presumes the integration of the state it creates into the international legal order of the community of States”.[1] As a result, German Law is to be interpreted as consistently as possible with international law. This illustrates that jurisprudence and legal principles developed by domestic courts can promote IRC in domestic legislation and regulation.

Few countries have developed a new IRC policy in recent years. A notable example of an OECD country undertaking an ambitious process to design and develop such a policy is the United Kingdom, which, as a follow-up to its *OECD Review of International Regulatory Co-operation*, presented to the UK Parliament a call for evidence to develop a whole-of-government strategy on IRC (BEIS, 2020[14]).

Figure 4.1. Number of jurisdictions with an explicit whole-of-government, published or legal basis on IRC



Note: Data for OECD Countries is based on the 38 OECD member countries and the European Union.
Source: Indicators of Regulatory Policy and Governance Survey 2020.

Overall, the institutional arrangement for oversight of IRC remains fragmented across government authorities (Figure 4.2). Only four countries report their IRC agenda to be attributed to a single authority, generally the body with broader regulatory oversight functions (Figure 4.2 and Box 4.2). This limited involvement of regulatory oversight bodies in the oversight of IRC suggests a disconnect between IRC and better regulation, highlighting that international considerations are still only rarely perceived as an integral part of the domestic rulemaking process.

The most common governance structure for IRC remains the sharing of responsibility among relevant central government bodies. This can be easily understood, as the successful implementation of IRC is indeed a whole-of-government endeavour involving necessarily different actors (OECD, 2021[4]). Analysing country practices through the lens of the specific mechanisms of IRC provides some clarity in regard to the allocation of IRC-related responsibilities within governments. For example, specific authorities have increasingly are often made responsible for considering international instruments. While this is still most often the role of Ministries in charge of developing regulation, a notable increase of countries do give this role to regulatory oversight bodies, suggesting an increasing consideration of IRC in the better regulation agenda (Figure 4.3).

However, over a third of respondents continue to lack specific governance structures for overseeing IRC activities (Figure 4.2), making difficult the co-ordination among authorities with IRC functions and knowledge.

Box 4.1. Examples of whole-of-government IRC policy in selected OECD countries

IRC is formally embedded in **Canada's** overarching regulatory policy framework, the Cabinet Directive on Regulation (CDR). The CDR requires regulators to assess opportunities for co-operation and alignment with other jurisdictions, domestically and internationally, in order to reduce unnecessary regulatory burdens on Canadian businesses while maintaining or improving the health, safety, security, social and economic well-being of Canadians and protecting the environment.

The Cabinet Regulations No. 707 and 96 govern the **Latvian** government's engagement with international organisations and the institutions of the European Union, respectively. These provide strategic direction to Latvia's IRC activities in these fora, by establishing procedures for the initiation, development, co-ordination, approval and update of regulatory documents.

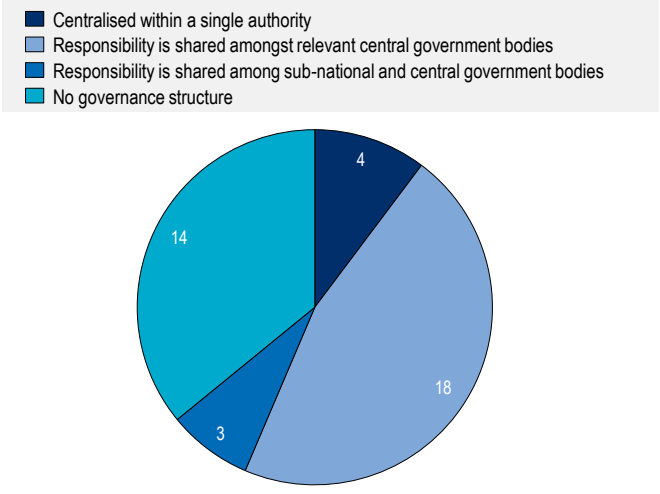
The IRC legal framework in **Mexico** is divided into two sets of legal provisions. These include i) two key documents framing IRC practices in domestic rule-making, namely the General Law of Better Regulation and the Federal Law of Metrology and Standardisation; and ii) the legal and policy documents framing Mexico's regulatory co-operation efforts, including the Law on Celebration of Treaties and the Law on Foreign Trade.

In **New Zealand**, IRC considerations are embedded in core documents, including the Government Expectations for Good Regulatory Practice and the Government's Regulatory Management Strategy.

In the **United States**, the Executive Order 13609 on Promoting International Regulatory Co-operation defines the purpose, features and responsibilities of IRC across government. In particular, it includes the following prerequisites to co-operate with other parties: i) regulatory transparency and public participation; ii) internal whole-of-government co-ordination; and iii) carrying out regulatory assessments.

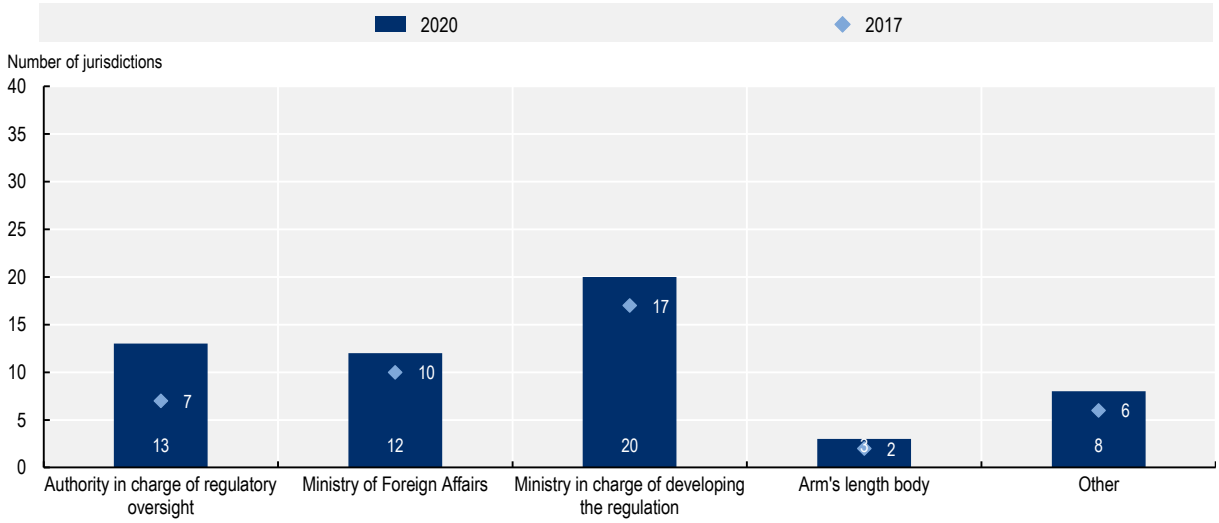
Source: (OECD, 2018[2]) (OECD, 2020[3]).

Figure 4.2. Organisation of oversight of IRC practices or activities



Note: Data for OECD Countries is based on the 38 OECD member countries and the European Union.
Source: Indicators of Regulatory Policy and Governance Survey 2020.

Figure 4.3. Authorities charged with overseeing the consideration of international instruments



Note: Data for OECD Countries is based on the 38 OECD member countries and the European Union.
Source: Indicators of Regulatory Policy and Governance Survey 2020.

Box 4.2. Practical approaches to IRC oversight in OECD countries

The Treasury Board Secretariat (TBS), the central oversight body in **Canada,** has a team responsible for supporting and co-ordinating efforts to foster international and domestic regulatory co-operation. This team works with regulators to ensure that they meet their obligations under the CDR and lead Canada's participation in different regulatory co-operation fora. TBS also works closely with Global Affairs Canada to negotiate regulatory provisions in trade agreements, including those related to IRC.

In **New Zealand**, responsibility for oversight and promoting consideration of IRC is shared across several agencies. The Treasury is the lead agency for good regulatory practice; the Ministry of Business, Innovation and Employment (MBIE) takes the lead on promoting international regulatory coherence; and the Ministry of Foreign Affairs and Trade (MFAT) acts as the lead advisor and negotiator on trade policy and provides advice on the process for entering into international treaties. The Treasury and MBIE co-ordinate on different IRC areas, such as developing cross-cutting GRP and regulatory co-operation chapters in FTAs, representing New Zealand at international regulatory policy fora, and contributing to benchmarking studies of regulation and the regulatory environment.

Source: (OECD, 2018[2]) (OECD, 2020[3]).

Embedding IRC throughout domestic rulemaking

International practices, in the form of evidence and expertise, are an essential source to inform domestic policy development and implementation (OECD, 2021[4]). Traditional regulatory management tools, such as RIA and stakeholder engagement, provide a pathway for countries to ensure consideration of international experiences. Results from the iREG survey and country-level analysis confirm a general upward trend in integrating international considerations into domestic rulemaking (OECD, 2018[2]) (OECD, 2020[3]).

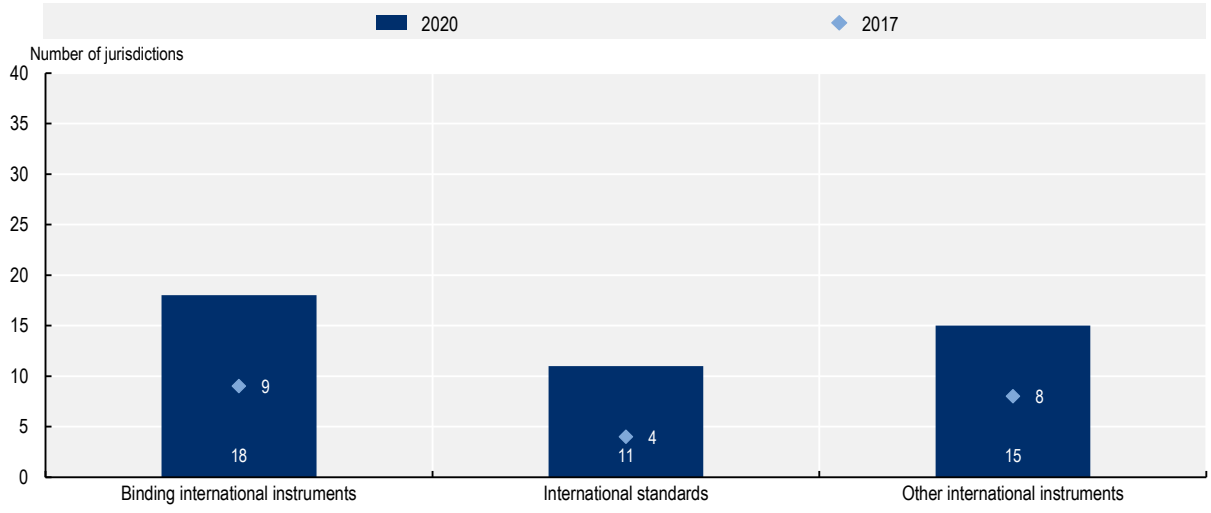
Consideration of international evidence and instruments

Policy makers around the world gather and use evidence in developing their regulations, as do international organisations in developing international instruments. Such evidence can clearly also benefit regulators facing similar challenges in other jurisdictions. Taking stock of international evidence may prove valuable in building the body of evidence for a particular regulation, informing a greater range of options for policy action, and helping to develop an evidence-based narrative around the chosen measure (OECD, 2021[4]).

Formal requirements to incorporate international instruments are a common way to ensure international experiences and expertise are considered in domestic rulemaking. A majority of countries have such requirements, particularly for binding international instruments or international standards (Figure 4.4). Several countries also have specific requirements to account for "other" types of instruments, typically for EU Directives or non-binding international instruments. For example, Australia prompts regulators to align legislation with relevant international instruments, while New Zealand encourages the consideration of non-binding resolutions, declarations and guidance in addition to binding instruments such as treaties and conventions. As illustrated in Figure 4.4, the consideration of all types of international instruments has accelerated dramatically in recent years.

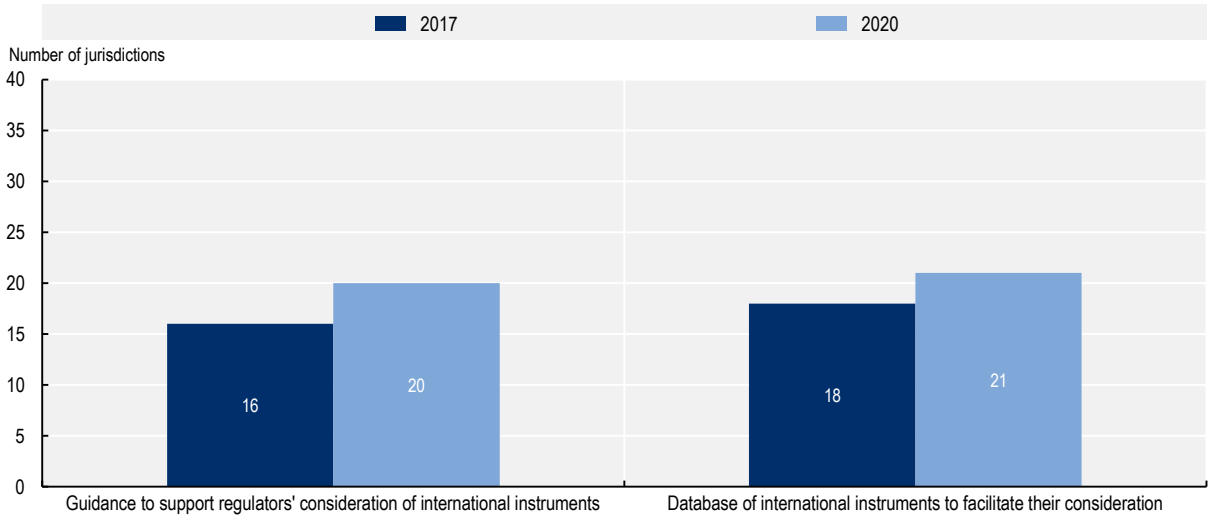
As mentioned above, oversight responsibilities are increasingly being clarified so that authorities – whether a single authority, or several under shared responsibility – oversee the consideration of international instruments. And finally, a slight upward trend since 2017 shows that different forms of guidance or supporting information sources are increasingly made available to incentivise the use of international instruments. This enhanced support suggests a tendency towards systematising the use of international instruments in domestic regulatory activities.

Figure 4.4. Number of jurisdictions with a formal requirement to consider international instruments in rulemaking (2017-2020)



Note: Data for OECD Countries is based on the 38 OECD member countries and the European Union.
Source: Indicators of Regulatory Policy and Governance Survey 2020.

Figure 4.5. Available guidance and databases to facilitate the consideration of international instruments



Note: Data for OECD Countries is based on the 38 OECD member countries and the European Union.
Source: Indicators of Regulatory Policy and Governance Survey 2020.

Box 4.3. The use of international evidence to inform domestic rulemaking

In **Chile**, Presidential Instruction No. 3/2019 on Regulatory Impact prompts regulators to assess whether there are existing international responses to a similar issue that the domestic regulation is designed to address, and to gauge the extent to which these have been successful.

The One-Stop Shop for New Business Models launched by **Denmark** in 2018 requires the Danish Business Authority (DBA) to collaborate with neighbouring countries to analyse how EU Directives are implemented in different ways across jurisdictions. It has a particular substantive focus on the sharing economy, the circular economy, e-commerce and data and new technology. Anchored in the Strategy for Denmark's Digital Growth, under the pillar of agile regulation, this aims to reduce digital barriers to trade and support an innovation-friendly internal market in the EU.

During the drafting of legislative proposals in **Estonia,** regulators are required to examine available international practices regarding the issue under consideration. If information from foreign legislation contributed to the preparation of a draft, this must be included in the accompanying explanatory letter.

The **European Commission Better Regulation Toolbox** encourages the use of quality, evidence-based data in the development of regulation, noting that "[p]*rima facie,* data from accredited national or international statistical offices or agencies can be used with greater confidence than data from non peer-reviewed literature or from interested stakeholders". To operationalise this guidance, it notes that, beyond EU-wide sources, many international organisations and institutions compile useful statistics and reports on areas such as energy, environment, agriculture and trade. The Toolbox lists a few examples of such international bodies, including the United Nations (UN), the OECD, the International Energy Agency (IEA), the World Trade Organization (WTO), the World Bank (WBG), the International Monetary Fund (IMF), and the International Labour Organization (ILO).

In **Slovenia**, regulators – when developing laws and regulations – are required to use information from EU regulations, decisions of the Court of Justice of the European Union, analysis of regulation in the EU acquis, analysis of regulation in at least three legal systems of EU Member States, as well as beyond the EU, from international agreements and analyses of regulation in other legal systems.

Source: 2020 iREG survey answers. See also https://ec.europa.eu/info/sites/info/files/better-regulation-toolbox_2.pdf.

Box 4.4. Use of databases to support rulemaking in OECD countries

The use of databases of information and international instruments to underpin regulatory processes represents an increasingly common practice in OECD countries. These facilitate ready access to available international instruments and those to which a given country is a signatory, expand the evidence base contributing to regulations, and streamline the regulatory life-cycle by allowing policy makers to align their proposals with their country's international commitments.

- The government of **Mexico** has a general database containing procedural information to frame its conduct in international legal fora, through the provision of the full Spanish texts of the Vienna Convention on the Law of the Treaties, the Vienna Convention on the Law of Treaties between States and International Organisations or between International Organisations, the Law on the Conclusion of Treaties, and the Law on the Approval of International Treaties in Economic Matters. In addition, the database displays Mexico's human rights commitments under international law, and the international jurisdictions that apply to the country.
- The **Slovak Republic** operates a series of sector-specific databases in key areas, including climate change, international private law, quality infrastructure (standards, metrology and testing), and multilateral, regional, and bilateral trade agreements concluded within the remit of the EU.
- **Slovenia's** Legal Information System provides access to the legislative documents issued by the European Union and the Council of Europe, as well as the decisions of the European Court of Justice. This is supported by a range of links to government and information resources.
- The Foreign, Commonwealth and Development Office (FCDO) of the **United Kingdom** manages a UK Treaties Online database, which catalogues over 14 000 treaties involving the country. The issuance of Treaty Action Bulletins offers regular updates on the UK's evolving international commitments, and a dedicated Treaty Enquiry Service supports users in navigating the database.

Source: iREG2021 survey responses, http://www.ordenjuridico.gob.mx/,%20http://www.minzp.sk/sekcie/temy-oblasti/ovzdusie/politika-zmeny-klimy/medzinarodne-zmluvy-dohovory/; http://wwwold.justice.sk/wfn.aspx?pg=l722&htm=l7/l700.htm; http://www.unms.sk/?medzinarodne-zmluvy-a-dohody; http://www.mhsr.sk/obchod/multilateralne-obchodne-vztahy/wto/dolezite-dohody-prijate-v-ramci-wto-a-gatt; http://www.mhsr.sk/uploads/files/3dleJuVE.pdf; http://www.pisrs.si/Pis.web/; https://www.gov.uk/guidance/uk-treaties.

Box 4.5. Embedding international obligations, standards and practices in domestic regulations

Australia has a cross-sectoral requirement to consider "consistency with Australia's international obligations and relevant international accepted standards and practices" (RIA Guide for Ministers' Meetings and National Standards Setting Bodies). 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. If a regulatory option involves establishing or amending standards in areas where international standards already apply, the proponent should document whether (and why) the proposed standards differ from the international standard.

Adopted in 2018, **Israel's** Government Resolution 4398 establishes a principle that the development of domestic regulation will be based on international practices and rules. In addition, in the design phase of domestic standards, the Israeli Standards Institute is required to check whether there is an applicable international standard. From 2017-2020, the Ministry of Economy enacted a three-year plan to convert and align Israeli standards with international standards. This facilitated the removal of national deviations from more than 500 standards.

Mexico has various provisions encouraging the adoption of international standards, mostly bearing on technical regulations and standards. If international standards do not exist, the consideration of foreign standards is encouraged. This applies particularly to standards from two major trading partners, the United States and the EU. To support regulators with this obligation, guidance on how to embed international standards in domestic technical regulations or standards was developed, and some examples of international and foreign standards are listed in the legal obligation.

The **New Zealand** Government Expectations for Good Regulatory Practice apply to all of New Zealand's regulatory systems and, therefore, to all kinds of regulatory measures and actors. This provides that "the government believes that durable outcomes of real value to New Zealanders are more likely when a regulatory system … is consistent with relevant international standards and practices to maximise the benefits from trade and from cross border flows of people, capital and ideas (except when this would compromise important domestic objectives and values)". Regulatory agencies are expected to undertake "systematic impact and risk analysis, including assessing alternative legislative and non-legislative policy options, and how the proposed change might interact or align with existing domestic and international requirements within this or related regulatory systems".

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 Cooperation Councils.

Source: (OECD, 2018[2]) (OECD, 2020[3]).

Engaging foreign stakeholders and ensuring transparency

Transparency of domestic regulatory processes can strengthen the predictability of the domestic regulatory framework for interested foreign parties. With active engagement, it can also open the possibility for valuable inputs from foreign stakeholders. Engaging these stakeholders in the regulatory process may offer valuable evidence on unintended transboundary impacts of regulatory drafts and help raise awareness of regulatory approaches in other jurisdictions (Basedow and Kauffmann, 2016[15]). OECD studies have shown that regulators rarely pursue specific efforts to engage foreign stakeholders when developing laws and regulations, despite general openness of consultation procedures to any stakeholders – including those from foreign jurisdictions (OECD, 2018[16]). Compulsory notification of draft regulations to international fora provides an important means by which to alert and draw inputs from foreign stakeholders (OECD, 2021[4]). In practice, such notifications of draft measures are most frequently used to assess trade impacts of regulations. Notifications of draft measures to trading partners is indeed required by certain trade agreements and WTO commitments under the SPS and TBT Agreements. However, some countries report also notifying to other international fora. Germany, for example, has notification obligations to the Central Commission for the Navigation of the Rhine (CCNR), a transboundary water management body which also includes France, the Netherlands, Switzerland, and Belgium. In the same vein, the Netherlands informs the International Labour Organization (ILO), Council of Europe, and Benelux Economic Union – which also comprises Belgium and Luxembourg – of new regulations where relevant.

Despite the invaluable information that can be gathered through notification of draft measures to international fora or foreign partners, a disconnect has traditionally persisted between these processes and the regulatory policy agenda, therefore failing to leverage useful information sources gathered in other parts of government (OECD, 2018[16]). Consistent with previous trends, many countries still do not conduct specific efforts to engage with foreign stakeholders in their rulemaking processes (22 respondents indicate never doing so for primary laws, and 21 for subordinate regulations) (Figure 4.6).

Nevertheless, the countries that do reach out to foreign stakeholders confirm multiple means of doing so (Box 4.6). Targeted invitations to comment remains the most frequently used means to reach foreign stakeholders (Figure 4.6).

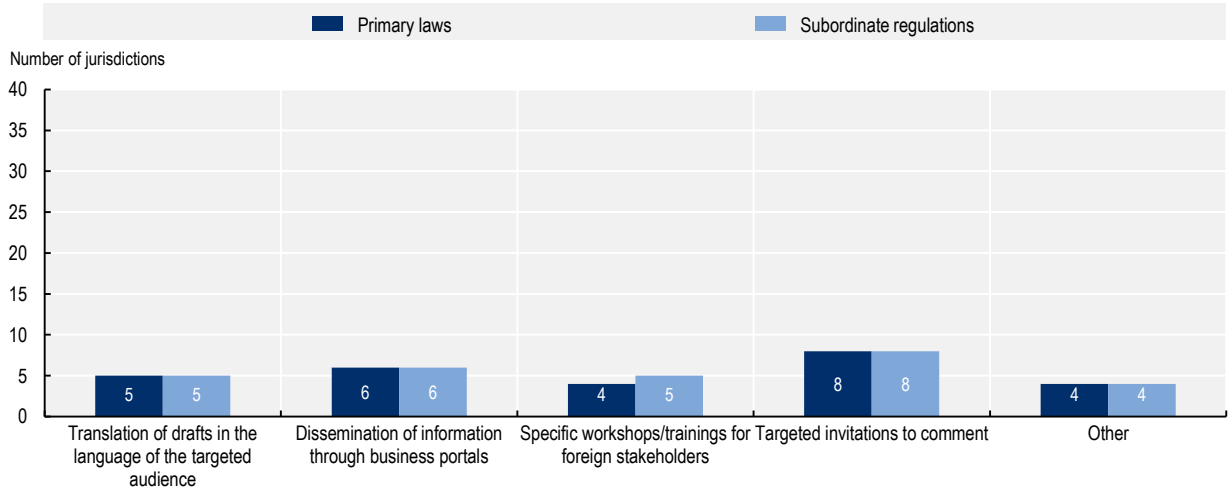
Box 4.6. Engaging External Stakeholders in the Development of Domestic Legislation

Latvia conducts consultations with foreign stakeholders in the development of some primary laws, with a particular focus on those from across the Baltic region (i.e. Estonia and Lithuania). In addition, the government engages regularly with the external stakeholders comprising the Foreign Investors' Council in Latvia (FICIL), which includes a selection of firms, chambers of commerce, representatives from the Stockholm School of Economics in Riga and French Foreign Trade Advisors.

The government of **Norway** frequently launches consultations with selected international stakeholders for emerging regulatory proposals that have transboundary impacts. These efforts are targeted to particular firms, associations and organisations, but remain ad-hoc in nature. Two recent examples include reforms to the Financial Undertakings Act made by the Ministry of Finance, and a comprehensive new law on gambling under development by the Ministry of Culture.

Source: Indicators of Regulatory Policy and Governance Survey 2020.

Figure 4.6. Approaches to assessing impacts on foreign jurisdictions and to targeting jurisdictions for assessment for subordinate regulations



Note: Data for OECD Countries is based on the 38 OECD member countries and the European Union.
Source: Indicators of Regulatory Policy and Governance Survey 2020.

Assessing impacts beyond borders

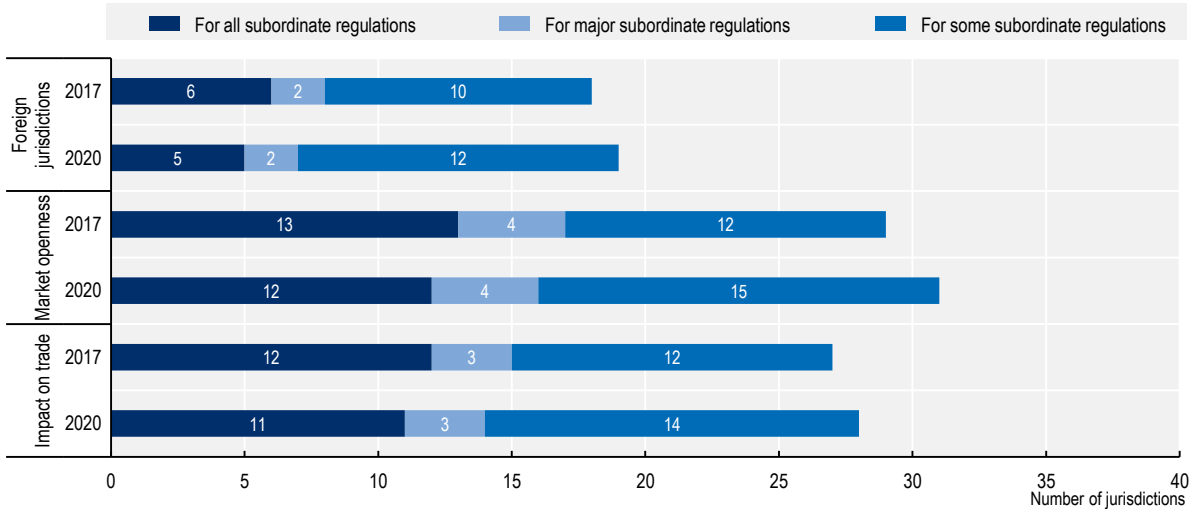
Accounting for international impacts in ex ante *regulatory impact assessment*

In addition to engaging with foreign stakeholders in regulatory process, countries may also promote IRC by integrating an analysis of possible international impacts systematically into their RIA processes. RIAs offer an effective avenue to promote IRC by enabling countries to consider the impact of their activities beyond their borders. As observed in both 2014 and 2017, countries report a range of IRC-related impacts in their RIA processes, in particular by charting specific effects on trade, market openness, and impacts on foreign jurisdictions (Figure 4.7). Consideration of the trade and market openness impacts of regulatory drafts remain the most frequent, with almost 75% of respondents examining trade implications and around 80% accounting for market openness effects. This illustrates an increasing trend since 2017. Consideration of domestic effects of regulation on foreign jurisdictions is less systematic, with only a handful of countries doing so for all subordinate regulations (Figure 4.7).

Given the specific methodology involved in considering international impacts, embedding such considerations can require more time and human resources to reach out to different colleagues across government with the right expertise. Some countries have therefore chosen to use an initial RIA "calculator" phase to determine the types of international impacts to assess. For example, to apply a more thorough calculation of trade impacts only when relevant, Mexico has included a "trade filter" in its RIA calculator. This integrates international trade impacts into the RIA process from the outset of the process. The questions aim to guide regulators in determining whether their draft may affect international trade. If the initial filter points towards a prima facie impact on trade, regulators then undergo a RIA process with more detailed questions related to the impacts of their draft on foreign trade (OECD, 2018[2]).

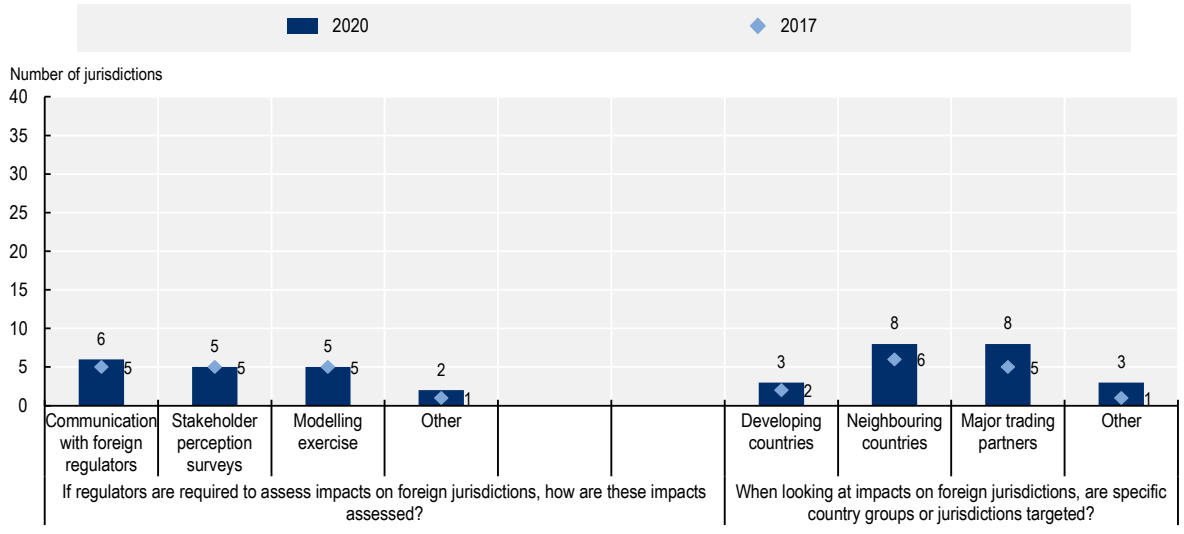
Of the 19 countries that consider the impacts of their regulations on foreign jurisdictions, neighbouring countries and major trading parties increasingly continue to be the most common jurisdictions taken into account. Countries steadily report using a mix of approaches to assessing impacts, including communication with the other jurisdictions' regulators, use of perception surveys to business and other stakeholders and modelling exercises (Figure 4.8).

Figure 4.7. Number of jurisdictions with requirements for consideration of impacts on foreign jurisdictions, market openness, or trade as part of RIA



Note: Data for OECD Countries is based on the 38 OECD member countries and the European Union.
Source: Indicators of Regulatory Policy and Governance Surveys 2014, 2017 and 2020: http://oe.cd/ireg.

Figure 4.8. Approaches to assessing impacts on foreign jurisdictions and to targeting jurisdictions for assessment for subordinate regulations



Note: Data for OECD Countries is based on the 38 OECD member countries and the European Union.
Source: Indicators of Regulatory Policy and Governance Survey 2020.

Box 4.7. Country experiences in assessing cross-border impacts in RIA

Chile included items on the effects of regulatory proposals on trade, as well as on international standards and international agreements in its Presidential Instruction No. 3/2019 on Regulatory Impact. Regulators are required to rate the magnitude of this impact, on a spectrum ranging from nothing or almost nothing, slightly, moderately, reasonably, or significantly.

Denmark systematically assesses the impacts of new regulations on border obstacles across the Nordic region as set forth in Parliamentary Resolution V57 and Paragraph 2.8.12.3 of its Guidelines on Legal Quality. To minimise and prevent raising unnecessary barriers, proposals in areas potentially affected by border obstacles – including in relation to free movement – must involve an examination of the legislation in other Nordic countries prior to their submission to the Folketing (Parliament). This extends to the implementation of EU Directives, and the impacts on the relationship with the Faroe Islands and Greenland.

Mexico introduced a trade filter in the RIA process that provides an opportunity to assess the impacts on exports and imports of a regulatory measure and triggers the involvement of the Ministry of Economy for notification to WTO. Through nine detailed questions, this trade filter allows regulators to identify the potential trade impacts of draft regulations. If such an impact is identified, a specific trade RIA is conducted and the draft measure is notified to the WTO, thus providing the possibility to gather feedback on the measure from other WTO members and potentially stakeholders.

The **United Kingdom** introduced a new RIA template in 2018, including a new question related to the impacts of UK regulations on international trade and investment (i.e. *Is this measure likely to impact on trade and investment? Yes/No*). This new template was trialled in 2019. Based on the first set of responses to this template, the UK Department of International Trade (DIT), Better Regulation Executive (BRE) and Regulatory Policy Committee (RPC) are working together to refine the methodologies to support departments in measuring the trade impacts of their draft measures.

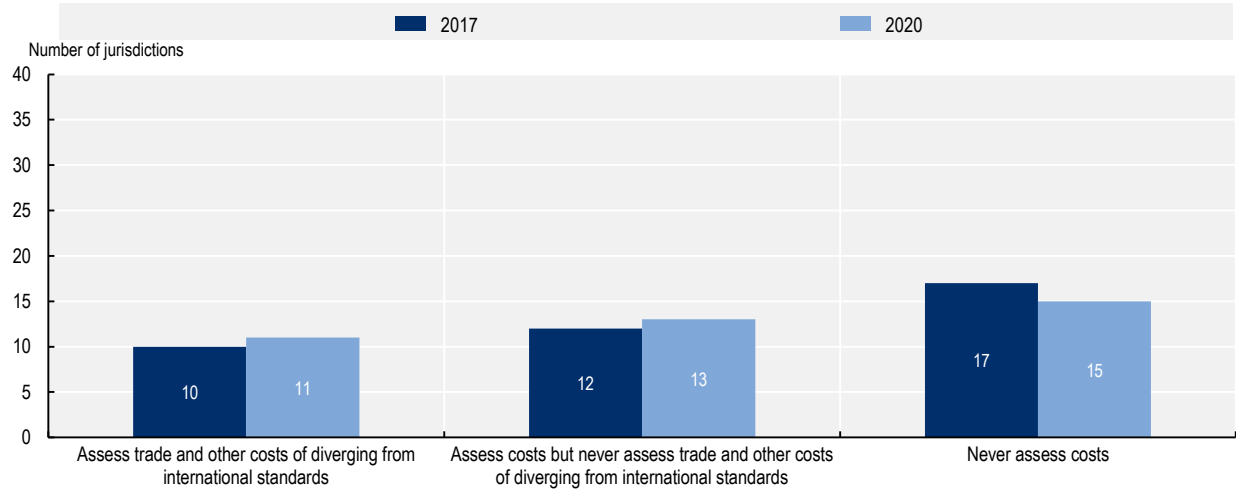
Source: (OECD, 2018[2]) (OECD/WTO, 2019[7]) (OECD, 2020[3]).

Assessing the cross-border impacts of regulations through post-implementation reviews

The full impact of a regulatory measure is only known after its implementation. *Ex post* evaluation thus provides a critical opportunity to identify the impacts of potential divergences with international frameworks as well as trade and other IRC impacts of laws and regulations (Kauffmann and Basedow, 2016[17]). It also allows regulators to map the state of international knowledge on the regulated area, take stock of new approaches adopted by other jurisdictions that may have proved successful, and benchmark against regulations implemented in other jurisdictions which pursue similar objectives using alternative approaches (OECD, 2020[18]). Overall, this can help to build the evidence on IRC throughout the rule-making cycle and apply an IRC lens to the stock of regulation.

Traditionally, the use of *ex post* evaluation related to IRC is rarely observed. While little variation can be observed for IRC *ex post* cost assessments in secondary legislation, there has been a slight upward trend in the number of countries that account for IRC-related costs in their *ex post* evaluations of primary laws (Figure 4.9). Some OECD countries provide guidance to ensure that IRC is part of their regulatory management tools, including *ex post* evaluation (Box 4.8). Evidence from standalone chapters on good regulatory practices and IRC in trade agreements indicates that countries increasingly regard *ex post* reviews as a mechanism of regulatory co-operation among parties. This includes promoting the exchange of methodologies and outcomes of these evaluations (Box 4.9).

Figure 4.9. Number of jurisdictions that assess costs in *ex post* evaluations of primary laws, including trade and other costs of diverging from international standards



Note: Data for OECD Countries is based on the 38 OECD member countries and the European Union.
Source: Indicators of Regulatory Policy and Governance Survey 2020.

Box 4.8. Embedding IRC in *ex post* evaluations

Canada

In the updated version of Canada's Directive on Regulation of September 2018, regulatory co-operation is embedded throughout the regulatory lifecycle:

- Regulators are required to assess early opportunities for alignment with other jurisdictions (domestically and internationally) to reduce unnecessary regulatory burden on Canadian businesses while maintaining or improving the health, safety, security, social and economic well-being of Canadians, and protecting the environment;
- Where a Canada-specific approach is required, regulators must provide a rationale in the regulatory impact assessment statement;
- Forward regulatory plans require identification of regulatory co-operation issues; and
- As part of stock reviews, regulators must identify new opportunities to reduce regulatory burdens on stakeholders through regulatory co-operation activities.

New Zealand

The New Zealand Government Expectations for Good Regulatory Practice apply to all of New Zealand's regulatory systems and therefore to all kinds of regulatory measures and actors. Part A of the Expectations sets out requirements for the design of regulatory systems. This provides that "the government believes that durable outcomes of real value to New Zealanders are more likely when a regulatory system … is consistent with relevant international standards and practices to maximise the benefits from trade and from cross border flows of people, capital and ideas (except when this would compromise important domestic objectives and values)". New Zealand applies the term international standards in this context more broadly than in this report, going beyond the WTO definition to cover all international instruments. Part B sets out expectations for regulatory stewardship by government agencies. The regulatory stewardship role includes responsibilities for monitoring, reviews and reporting

on existing regulatory systems. Regulatory agencies are expected to "periodically look at other similar regulatory systems, in New Zealand and other jurisdictions, for possible trends, threats, linkages, opportunities for alignment, economies of scale and scope, and examples of innovation and good practice". As part of regulatory stewardship responsibilities for robust analysis and implementation support for changes to regulatory systems, regulatory agencies are expected to undertake "systematic impact and risk analysis, including assessing alternative legislative and non-legislative policy options, and how the proposed change might interact or align with existing domestic and international requirements within this or related regulatory systems".

Source: (OECD, 2020[3]); www.canada.ca/en/treasury-board-secretariat/services/federal-regulatory-management/guidelines-tools/cabinet-directiveregulation.html and https://treasury.govt.nz/sites/default/files/2015-09/good-reg-practice.pdf.

Box 4.9. Exchange of *ex post* evaluations results as an avenue for regulatory co-operation

As trade agreements have broadened in content and scope, they provide a route for promoting regulatory quality across countries. A number of recent trade agreements have incorporated dedicated horizontal chapters that generally aim at promoting a minimum level of GRPs and/or IRC among partners.

In encouraging parties to strengthen regulatory policy, these horizontal chapters promote the systematic adoption of regulatory management tools available to policy-makers to ensure the quality of laws and regulations, including *ex post* evaluations.

Notably, the dedicated chapters in the Brazil-Chile Trade Agreement, EU-Japan Economic Partnership Agreement, the CETA and USMCA provide for *ex post* reviews as an avenue of regulatory co-operation among parties. The CETA notes that, as part of its IRC activities, parties may conduct *ex post* evaluations of regulations or policies, compare the methods and assumptions used in these reviews and share summaries of their outcomes, when applicable. Similarly, the chapter in the Brazil-Chile Trade Agreement provides that parties may exchange information on *ex post* assessment methodologies and practices. The EU-Japan agreement encourages parties to exchange of information on good regulatory practices, including on retrospective evaluations. Finally, the USMCA recognises that periodically exchanging information on post-implementation reviews of regulations affecting trade or investment may contribute to minimising regulatory divergences.

Notes: The agreement under review in (Kauffmann and Saffirio, 2021[8]) include: the Agreement between New Zealand–Singapore on a Closer Economic Partnership (NZ– Singapore CEP Upgrade), the Agreement between the EU and Japan for an Economic Partnership (EU–Japan EPA), the Canada – EU Comprehensive Economic and Trade Agreement (CETA); the Brazil – Chile Trade Agreement; the Chile – Uruguay Trade Agreement; the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP), the First Amendment to the Additional Protocol of the Pacific Alliance Framework Agreement (Pacific Alliance); and the United States-Mexico-Canada Agreement (USMCA).
Source: (Kauffmann and Saffirio, 2021[8]).

Bilateral, regional and multilateral co-operation: leveraging international co-operation efforts to improve the quality of domestic rulemaking

Domestic policy makers have access to a wealth of bilateral, regional and multilateral platforms to co-operate and inform their approaches to national policy challenges (OECD, 2013[11]) (OECD, 2014[19]). Bilateral, regional and multilateral forms of co-operation are an important complement to purely unilateral

domestic actions. Such international co-operation lays the foundation for institutionalised and continuous collaboration and greater coherence in regulatory matters. The modalities of international co-operation will depend on the legal and administrative system and geographic location of the country, as well as on the sector or policy area under consideration (OECD, 2021[4]).

These platforms increasingly take different forms, with multiple actors populating the global landscape today ranging from inter-governmental organisations (IGOs), trans-governmental networks (TGNs) and private standard-setters. These organisations develop a fast-growing body of norms and standards (OECD, 2019[20]), which support national regulatory efforts in addressing the increasingly internationalised policy challenges of today. During the COVID-19 crisis, a number of bilateral and regional collaboration efforts emerged to address urgent needs with likeminded and neighbouring countries. Given the global scope of the pandemic, the role of multilateral organisations was particularly apparent. This highlights their relevance as hubs for information and developing international instruments, both crucial support elements for domestic policy makers (OECD, 2020[1]) (OECD, 2020[21]). Beyond the pandemic, other recent initiatives for international co-operation also continue emerging to address new and evolving policy priorities, such as for example to foster global co-operation in response to innovation (Box 4.12).

Despite IOs' importance in supporting domestic rulemaking, the previous Regulatory Policy Outlook highlighted a pressing need for IOs to increase the transparency, effectiveness and impact of their instruments – notably through the adoption of good regulatory practices (GRPs), such as those promoted in the 2012 Recommendation for domestic rulemaking (OECD, 2018[13]). Although more efforts are needed, recent initiatives by individual IOs, in addition to the *Compendium of International Organisations' Practices: Working Towards More Effective International Rulemaking* (IO Compendium) developed collaboratively by the Partnership of IOs for Effective International Rulemaking, show measures and initiatives used by IOs to strengthen their rulemaking processes with a view to making their international instruments more effective.

This section presents the role of international instruments in feeding into domestic rulemaking, both through results from the iREG survey and of recent OECD analytical work. It also highlights the specific role that IOs had in this regard during the COVID-19 crisis. Finally, it outlines the specific efforts made by IOs to improve the quality of international rulemaking. The primary information sources for this section include the results of the 2018 Survey of International Organisations, the recent studies of the World Organisation for Animal Health (OIE) (OECD, 2020[22]), the International Bureau of Weights and Measures (BIPM) (OECD, 2020[23]) and the World Trade Organisation (WTO) (OECD/WTO, 2019[7]), and preliminary results from the IO Compendium.

International instruments in support of national regulatory efforts

International expertise and evidence is vital to support domestic policy makers in developing effective, evidence-based policies in a highly interconnected world. IOs serve, first and foremost, as institutional fora for actors to engage in IRC. They possess a large amount of information and experience from which governments and agencies can draw (OECD, 2014[19]). In other words, they provide a framework to "orchestrate" the sharing of evidence among their constituencies in their respective policy areas in various forms (raw, compiled in databases, analysed in thematic or country reports).

This regular and permanent exchange of information function allows IO Members to share views on emerging policy challenges they are facing and envisage various policy options available for addressing them. This is the case, for example, for the WTO Technical Barriers to Trade and Sanitary and Phytosanitary Committees, which have such an "incubator" role, via thematic sessions or workshops in which Members exchange for instance on sector-specific ongoing, new or emerging regulatory issues (e.g. energy efficiency, or nutrition labelling) (OECD/WTO, 2019[7]).

This function of IOs as "data hubs" is instrumental in the COVID-19 crisis. Practically all IOs that host normative instruments, including the OECD, established a COVID-19 dedicated website to serve as a platform for information exchange in their respective mandates (OECD, 2020[1]). Beyond these public websites, they also provide a platform for members to exchange on their respective measures and find common positions (Box 4.10).

Beyond information exchange, IOs allow for the aligning of approaches across countries facing similar policy issues, such as through the development of international terminologies or instruments. Indeed, when national delegates or regulators reach agreements on IRC, or when they adopt rules through institutionalised procedures, the results can be embodied in various forms of normative instruments (OECD, 2014[19]). These international instruments, which can be used in national legislation, can increase coherence in regulatory approaches across countries.

In the context of the COVID-19 pandemic, IOs were under great pressure to deliver for their constituencies in coping with the crisis (OECD, 2020[1]). Making use of their normative functions and respective areas of expertise, a number of IOs developed guidance adapting their traditional tools to the context of the pandemic – either advising their constituencies on how to deal with its impacts in their area or the related global social and economic crisis (Box 4.11).

Box 4.10. IOs as platforms for emergency information exchange in times of COVID-19

A wide range of IOs responded to the urgent data needs of their constituencies to deal with the crisis originating in the COVID-19 pandemic.

- The World Health Organization (WHO) played a highly visible role in this respect, by compiling and disseminating health statistics essential to evaluate health programmes and making recommendations on international health matters. The WHO's International Health Regulations (IHR) provide an overarching legal framework that defines countries' obligations in handling acute public health risks that have the potential to cross borders. The IHR "are the sole binding global legal instrument dedicated to the prevention and control of the international spread of disease" (Burci, 2020[24]). Under the IHR, the WHO acts as a central co-ordinating body for addressing the pandemic, receiving notifications on outbreaks and disseminating information to help scientists address an epidemic at the global level.
- The OECD compiles real time data and analysis on the multifaceted consequences of the global crisis, from health to education, employment and taxes.[1]
- The World Organisation for Animal Health (OIE) compiles data from Members on any outcomes of investigations in animals to detect infections with SARS-CoV-2.[2]
- The World Trade Organization (WTO) made available notifications of COVID-related measures[3] and has issued a series of information notes on COVID-19 and world trade.
- The World Tourism Organization (UNWTO) has carried out an impact assessment of the COVID-19 crisis on the tourism sector.[4]
- The Council of European Energy Regulators allowed energy regulators to share notes on their respective national measures to address the COVID-19 induced decrease in energy demand; as well as to share practices on how to support vulnerable customers.
- The Food and Agriculture Organization of the United Nations (FAO) has developed a Big Data tool on food chains under the COVID-19 pandemic that gathers, organises and analyses daily information on the impact of the COVID-19 pandemic on food and agriculture, value chains, food prices, food security and undertaken measures. As stated on the FAO website, the tool's

ultimate aim is to provide countries with facts and information on how the pandemic impacts the food chains to build their decisions.[5]

- The World Customs Organization's (WCO) Customs Enforcement Network Communication Platform (CENcomm) allows customs worldwide to share intelligence on fake medical supplies and medicines.

1. http://www.oecd.org/coronavirus/en/.
2. See "events in animals" section at https://www.oie.int/scientific-expertise/specific-information-and-recommendations/questions-and-answers-on-2019novel-coronavirus/.
3. https://www.wto.org/english/tratop_e/covid19_e/covid19_e.htm#faq and https://www.wto.org/english/tratop_e/covid19_e/standards_report_e.pdf.
4. https://www.unwto.org/impact-assessment-of-the-covid-19-outbreak-on-international-tourism.
5. http://www.fao.org/datalab/website/web/covid19.

Source: (OECD, 2020[1]).

Box 4.11. IOs as platforms for joint action in the context of COVID-19

As platforms for joint action, a large number of IOs developed guidance in the context of the COVID-19 pandemic to support their constituency in facing the health, economic or social crisis.

- The OECD provided tailored guidance to help countries during the crisis in its various policy areas, including on maintaining regulatory quality in times of crisis.
- The International Labour Organization (ILO) prepared a Prevention and Mitigation of COVID-19 at Work Action Checklist that offered a collaborative approach to assess pandemic risks, as a step to take measures to protect the safety and health of workers.
- The International Maritime Organization (IMO) provided advice and guidance to facilitate maritime trade and preserve the health of seafarers.
- The International Civil Aviation Organization (ICAO) developed a number of "quick reference guides" to provide guidance of a particular subject area in addressing COVID-19 related risks to the continuity of aviation business and operations.
- The International Criminal Police Organization (INTERPOL) developed guidelines on how to protect law enforcement and first responders.
- The Commonwealth developed Guidelines on sport, exercise and physical activity and Sport policy during the coronavirus pandemic.
- The World Customs Organization (WCO) developed guidance on a number of issues to facilitate movement of essential goods across borders.
- The *Bureau International des Poids et Mesures* (BIPM) is working with National Metrology Institutes on validation, calibration and verification of measurement instruments relevant for a range of COVID-19 essential products and to develop protocols for organising scientific comparisons to underpin antigen and vaccine testing.

Source: (OECD, 2020[1]).

Box 4.12. Agile Nations: a new frontier in international regulatory co-operation?

In November 2020, Canada, Denmark, Italy, Japan, Singapore, UAE and UK sign the Agile Nations Charter, establishing an intergovernmental network to foster global co-operation in response to innovation. The central objective of this network is to strike an effective balance between the creation of a regulatory environment conducive to the emergence and proliferation of new innovations, while facilitating better public management of cross-border risks.

In sum, the Agile Nations Charter sets out each country's commitment to creating a regulatory environment in which new ideas can thrive. The agreement paves the way for these nations to co-operate in helping innovators navigate each country's rules, test new ideas with regulators and scale them across the seven markets. Priority areas for co-operation include the green economy, mobility, data, financial and professional services, and medical diagnosis and treatment.

Within the Charter, the Participating governments acknowledge that good practice in rulemaking is evolving and will review these practices regularly, giving consideration to the work of the OECD, the World Economic Forum and other international organisations.

Source: https://www.gov.uk/government/publications/agile-nations-charter; https://www.oecd.org/gov/regulatory-policy/agile-governance-for-the-post-pandemic-world-wef-oecd-joint-event.htm.

Improvement of quality and effectiveness of international instruments

The OECD finds that international instruments have become a significant channel of domestic regulators' implementation of IRC (OECD, 2018[13]). Nevertheless, for regulators to more systematically consider international instruments when developing and applying domestic regulatory frameworks, these instruments need to be of high quality, widely and easily accessible, and fit to achieve the public interest in their own jurisdiction.

The OECD identifies five core priorities to make international instruments more effective: clarifying the landscape of international instruments to describe existing terminologies and related legal effects; strengthening the implementation of international instruments at the domestic level; developing a culture of evaluation of international instruments; ensuring efficient stakeholder engagement and maximising opportunities for co-ordination across IOs (OECD, 2016[25]). Under the framework of the OECD Regulatory Policy Committee, the Partnership for Effective International Rulemaking ("IO Partnership") has worked on these five challenges, gathering lessons from domestic regulatory policy for international rulemaking. The Compendium of International Organisations' Practices: Working Towards More Effective International Instruments ("IO Compendium") showcases an increasing number of trends and individual examples of IO practices that seek to ensure the quality of international instruments (Box 4.13), and lays down key principles to improve the effectiveness of international rulemaking. As a practical tool for IO Secretariats in their rulemaking activities, the IO Compendium also provides clarity for domestic regulators to navigate the landscape of international instruments and to identify the most relevant instruments for them. It also represents an extensive information source on the tools of regulatory quality used at the international level (OECD, 2021[26]).

Box 4.13. Examples of IO practices aimed at improving transparency, evaluation and co-ordination of international instruments

Clarifying a variety of international instruments

In line with the general efforts to provide better visibility and clarity into the work of IOs and their instruments, the Online Compendium of OECD Legal Instruments provides the texts of all the legal instruments developed within the framework of the OECD since 1961 – including abrogated instruments – together with information on the process for their development and implementation as well as non-Member adherence. A downloadable booklet gathering this information is also available for each instrument. The Compendium is available to the general public and maintained by the OECD Directorate for Legal Affairs.

Strengthening implementation

As part of a broad strategy to strengthen implementation of its standards, the World Organisation for Animal Health (OIE) is designing an Observatory to monitor the implementation of OIE international standards. Data collected and analysed is planned to assist the OIE in gaining a greater understanding of challenges to the implementation of standards and to evaluate the relevance and efficiency of OIE international standards. Ultimately, the outcomes of the Observatory are expected to help improve the OIE standard setting process, feeding back into the development and revision of OIE standards.

Stakeholder engagement

With the aim of improving the effectiveness of its stakeholder engagement efforts, the WHO has set a whole-of-organisation policy on stakeholder engagement with its "Framework of Engagement with non-State Actors". This frames its engagement with NGOs, private sector entities, philanthropic foundations and academic institutions. The Framework identifies various categories of interaction in which the WHO engages with non-State actors: participation in, inter alia, consultations, hearings, and other meetings of the Organization; provision of financial or in-kind contributions; provision of evidence; advocacy activities; and technical collaboration, including through product development, capacity-building, operational collaboration in emergencies and contribution to the implementation of WHO's policies. It establishes mechanisms to manage conflicts of interest and other risks of engagement.

Evaluation

To ensure that ISO standards remain up-to-date and globally relevant, they are reviewed at least every five years after publication through the Systematic Review process. This is frequent practice among private standard-setting bodies, and similar processes are in place at IOs such as OIML or ASTM International. Through this process, ISO members review the document and its use in their country (in consultation with their stakeholders) to decide whether it is still valid, should be updated, or withdrawn. ISO also provides a document outlining Guidance on the Systematic Review process.

Increasing co-ordination

The FAO-OIE-WHO Collaboration for "One Health" sets out a strategic direction for the three Organisations to develop a long-term basis for co-ordinating global activities to address health risks at the human-animal-ecosystems interface, and ensure consistency across the standard-setting activities of the three organisations involved.

Source: (OECD, 2020[22]) (OECD, 2019[20]); (OECD, 2021[26]).

Note

[1] Cf. *Mutual Legal Assistance Agreement between the Federal Republic of Germany and the Republic of Austria on Legal and Administrative Assistance in Customs, Excise and Monopoly Matters*, Order of the German Constitutional Court from 22 March 1983 (BVerfGE 63, 343-380 (370).

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5 The governance of sector regulators

The good governance of economic regulators is an important ingredient of robust and appropriate regulatory policy. Good governance supports better regulation, as well as stability and predictability in regulatory decision making. In the context of rapid changes that are reshaping network sectors such as energy, water, e-communications and transport, good governance can bring confidence that decisions are made with integrity. This chapter discusses the governance of regulators using evidence from the OECD Indicators on the Governance of Sector Regulators. It focuses on governance arrangements to safeguard independence and promote accountability in regulators across OECD and non-OECD member countries.

Key findings

- **Economic regulators are key actors in delivering essential services, and their governance affects the performance of critical network sectors.** Their work often has an impact on the major social, economic, technological and environmental challenges discussed in Chapter 1. Regulators occupy a unique position, interacting with consumers, businesses and government. Their governance and performance affect the quality of service delivery as well as the stability and predictability of regulatory decision making.
- **OECD data shows that many regulators share core functions to improve the functioning of markets and market outcomes, such as regulating prices, authorising companies to engage in regulated activities and taking final decisions in disputes**. A minority of regulators independently issue industry and consumer standards, while many enforce such standards. On average, energy and e-communications regulators have a broader scope of action than regulators in other sectors. Clearly ensuring adequate enforcement and oversight powers is key to the overall effectiveness of the regulatory regime.
- **Most OECD countries have delegated the economic regulation of network sectors to independent regulatory bodies, a formal arrangement that signals a commitment to long-term goals beyond political cycles.** Among surveyed regulators, a majority of regulators are independent bodies by law. In OECD countries, a majority of regulators in the energy (87%), e-communications (84%), rail transport (83%), and water (76%) sectors are independent. Only 50% of OECD air transport regulators are independent. In European Union member countries, EU Directives drive the creation of independent regulators in the energy and rail sectors. Regulators, whether legally “independent” or “ministerial”, can show a range of good-practice governance arrangements to safeguard independence.
- **Most regulators have legal safeguards regarding appointment, dismissal and post-employment restrictions of leadership to bolster independent decision making.** A single government body appoints the leadership of regulators in most of the sample, although the involvement of parliament in appointments (whether making the final appointment or providing an opinion) is not uncommon. While most regulators' leadership can be dismissed through government decisions, limited and defined criteria for dismissal in law limits the possibility of arbitrary termination in most countries. Post-employment restrictions for agency leadership, including cooling-off periods, are a common way to minimise the risk of a revolving door.
- **While most regulators show a degree of decision making and financial independence, arrangements to preserve budgetary and financial autonomy of regulators could be strengthened further.** For most regulators, involvement by the executive in regulators' work programme, individual cases/decisions and appeals is limited. Most regulators preserve a degree of autonomy in setting regulatory fees, with roughly half of the regulators funded through fees setting the fee level themselves, and many others proposing the level for approval by parliament, congress or the executive. However, budget appropriations tend to be annual, while multi-year funding arrangements can insulate the regulator from politically motivated changes.
- **On average, regulators with a stronger degree of independence use more good-practice accountability mechanisms, which enhances confidence.** A positive and statistically significant correlation between independence and accountability scores suggests that regulators with stronger independence arrangements also have stronger accountability practices.

- **Many regulators report basic measures to promote the accountability of regulators, a vital counterbalance to independence, but there is room to improve reporting on their performance**. Most regulators have basic good-practice arrangements related to stakeholder engagement. The majority usually publishes draft decisions for consultation and responds to stakeholder comments. However, there is an opportunity to expand the collection and reporting of information about a regulator's performance, crucial for assessing the quality of processes and driving improvements**.** Twenty per cent or more of regulators in the sample do not collect information on the quality of their regulatory processes, their compliance with legal obligations and the organisational governance of the regulator.
- **Early evidence suggests a correlation between the governance of regulators and certain indicators of market performance in the energy and e-communications sectors.** Future research exploring the relationship between governance and market performance may shed light on the existence of causal mechanisms of sector performance that relate to the governance of sector regulators.

Introduction

Economic regulators serve a critical role in network sectors such as energy, e-communications, transport and water. Economic regulators have a key role to play in addressing some of the challenges explored in Chapter 1, often confronting the major social, environmental, technological and economic challenges of the time. They act as rule-setters as well as market referees, ensuring market efficiency and the quality, reliability and affordability of services. In some cases, they also have other functions such as the promotion of competition in markets. They bring confidence to market actors, such as network operators and service providers, by ensuring stable regulatory decision making. This confidence in turn favours the likelihood of necessary investments in the sector, as actors trust that they can expect a reasonable return. The good governance of these vital actors promotes better regulation and stability and predictability in regulatory decision making.

The governance of economic regulators is an important contributor to strong regulatory frameworks that can build trust and weather change. Robust governance that helps strengthen confidence in regulators is increasingly important in the context of dwindling trust in public institutions in some countries. Indeed, OECD data suggests that people's trust in public institutions has yet to fully recover from the 2009 financial crisis across all OECD countries (OECD, 2019[1]). Regulators themselves play a key role in developing trust between and with actors in a sector, navigating perspectives from government, industry and consumers. A lack of trust in regulators could undermine confidence in their work, the stability they safeguard, and investment in the sectors they oversee. A robust accountability framework is therefore increasingly relevant in the context of changing markets and the potential of increased mistrust in public authorities, and opportunities to collect stakeholder input are critical in the context of changes in markets and the emergence of new market actors.

Governance arrangements that safeguard the independence of regulators provide confidence that decisions are made with integrity, free from undue influence from government, the regulated industry and other stakeholders. At the same time, with greater independence comes greater responsibility to remain accountable. Instruments to promote accountability allow the government, the legislature, regulated entities and the public to assess regulators' performance against their objectives. These governance arrangements are not ends in themselves, but rather crucial ingredients in the performance of regulatory authorities that are required to make decisions that are technically rigorous, objective and predictable, with the ultimate goal of promoting better sector performance and outcomes for consumers.

Regulators operate in rapidly changing markets, with new developments and uncertainty that directly affect their objectives (OECD, 2018[2]). Good governance supports stability and predictability, even in times of transformation and crisis. In the context of rapid changes in regulated sectors, the economy, politics and society, trust in regulatory decision making becomes even more crucial. Technological innovations are fundamentally transforming regulated markets, shifting the role of the regulator, as well as those of other stakeholders, and providing new tools for regulatory policy (see Chapter 1). Case studies from regulators in the OECD Network of Economic Regulators show that some regulators are reacting to and harnessing emerging technologies, adapting their structures and approaches to better regulate emerging technologies and to better regulate *using* emerging technologies (OECD, 2020[3]). Rapid changes also occur when crises such as the COVID-19 pandemic, but also economic crises, create more abrupt shocks to the status quo. Regulators' reactions to the COVID-19 pandemic highlight this aspect of uncertainty from a new angle, emphasising the need for regulators to bolster sector resilience (OECD, 2020[4]). Changing sectors require more agile regulators that are able to adapt while remaining predictable and accountable.

This chapter uses data from the OECD Indicators on the Governance of Sector Regulators to describe the governance arrangements in 163 economic regulators across the energy, e-communications, rail transport, air transport and water sectors in 47 countries.[1] The second edition of the indicators, the 2018 edition builds upon the experience of the 2013 indicators, which featured in the 2015 Regulatory Policy Outlook. The indicators reflect governance arrangements to safeguard independence (with respect to budget, staffing and decision making) and promote accountability (to the government, parliament, and the public). They also measure the regulators' scope of action, the range of functions conducted by the regulator. The OECD designed the indicators, collected and reviewed the data in consultation with members of the Network of Economic Regulators (more information in Box 5.1).

The purpose of this chapter is to provide an overview of trends in the governance of regulatory authorities, drawing from the empirical data in the indicators and normative materials. The results provide a high-level overview of the governance of economic regulators, allowing for comparison across countries and sectors. The chapter provides an empirical and normative foundation for readers to assess and monitor governance arrangements of regulators across OECD and non-OECD countries and identify areas for future improvement.

The data show a group of regulators with diverse constellations of governance arrangements to preserve independence and promote accountability, and highlight some areas for development. Measures to formalise the independence of regulators, such as the statutory establishment of an independent regulator, are common in much of the sample. Most regulators have arrangements to prevent arbitrary termination of leadership and reduce the risk of a revolving door for board members or agency heads. Financing and budgeting arrangements tend to include safeguards to preserve a degree of autonomy in financing and budget execution. Most regulators show independence in decision making as well. Good-practice arrangements to promote accountability and transparency, such as publishing an annual report, are present in most regulators. There is nevertheless room for improvement in performance reporting, especially for data relating to the performance of the regulator itself. Most regulators offer avenues for stakeholder comment on draft decisions, although a greater proportion of regulators in the transport sectors do not publish draft regulatory decisions for stakeholder comment. The indicators paint a picture of a diverse group of regulators showing convergence to good practice in some areas, with opportunities for improvement remaining in others.

Box 5.1. OECD work on the governance of regulators

The OECD supports regulators in their efforts to improve governance and performance through its Network of Economic Regulators (NER), normative guidance, data collection and analysis and in-depth peer reviews.

The OECD **NER**, established in 2013, provides a unique forum for regulators across a range of regulated sectors such as e-communications, energy, transport and water from across the world (including regulators from OECD and non-OECD member countries). The network allows participants to exchange first-hand experiences and good practices, discuss challenges and identify innovative solutions.

Key documents provide the **normative framework** for the governance of regulators that guides additional OECD work in this area. The **2012 Recommendation of the Council on Regulatory Policy and Governance** defines the high-level policies that governments can take to promote good regulatory policy and governance. The seventh principle relates directly to regulatory agencies - "Develop a consistent policy covering the role and functions of regulatory agencies in order to provide greater confidence that regulatory decisions are made on an objective, impartial and consistent basis, without conflict of interest, bias or improper influence" (OECD, 2012[5]).

The NER and the Regulatory Policy Committee developed the **Best Practice Principles for the Governance of Regulators** in 2014. The seven principles provide guidance on institutional arrangements, processes and practices for regulators (OECD, 2014[6]). Other publications have delved deeper into the governance of regulators. For example, the publications "Being an Independent Regulator" and "Creating a Culture of Independence" explore *de facto* and *de jure* elements of independence and the publication "Governance of Regulators' Practices: Accountability, Transparency and Co-ordination" examines accountability frameworks and co-ordination mechanisms (OECD, 2016[7]; OECD, 2017[8]; OECD, 2016[9]). The principles provided the basis for the development of the **Indicators on the Governance of Sector Regulators** that are the foundation of this chapter.

In the framework of the Network of Economic Regulators, the OECD carries out **in-depth peer reviews** that assess and strengthen regulators' performance assessment and governance frameworks. The Performance Assessment Framework for Economic Regulators (PAFER) provides the methodology for these reviews, informed by the normative framework above and built on lessons learnt from the NER.

Source: OECD (n.d.), "Performance of Regulators", www.oecd.org/gov/regulatory-policy/performance-of-regulators.htm (accessed 10 June 2020); OECD (n.d.), "Publications of the Network of Economic Regulators", www.oecd.org/gov/regulatory-policy/publications-of-the-network-of-economic-regulators.htm (accessed 10 June 2020).

The OECD Indicators on the Governance of Sector Regulators

The 2018 Indicators on the Governance of Sector Regulators map the governance arrangements of economic regulators in 47 countries and five network sectors (energy, e-communications, rail and air transport, and water). The database contains data from 163 distinct regulators. The governance arrangements captured in the indicators comprise three components: independence, accountability and scope of action, as described below.

- The **independence** component maps governance arrangements that safeguard the regulator's ability to operate independently and with no undue influence. It consists of questions gauging the regulator's independence in terms of its budgeting, staffing and relationship with the executive.
- The **accountability** component measures the regulator's accountability to government, parliament, stakeholders and the broader public. It reflects the use of certain aspects of stakeholder engagement and the collection, use, publication and reporting of performance information.
- The **scope of action** component reflects the breadth of regulators' competences. It asks questions about the regulators' attributions – from price setting to taking final decisions in disputes – and asks whether the regulator carries out its functions independently or with other bodies.

A questionnaire completed by regulators and governments then reviewed by the OECD Secretariat forms the basis of the indicator scores, which are calculated by averaging equally weighted questions and sub-questions on a standard questionnaire. The methodology uses equal weighting to avoid imposing judgements about the importance of elements within the composite indicators, but this should not be understood as showing that components lack weights entirely. While the indicators do not reflect the relative importance of its components, it provides an indication of the relative degree to which a regulator's governance arrangements reflect good practice, which can be supplemented by observed differences within the underlying data. Other methods capture the importance of the indicator components to the final composite; the OECD Handbook on Constructing Composite Indicators reviews equal weighting and alternative methods for weighting elements of composite indicators. The methodology scores answers on a scale from zero (most effective governance arrangement) to six (least effective governance arrangement). A score closer to zero in the independence and accountability component indicates that the regulator has governance arrangements in place that more closely reflect the good practices. In the scope of action section, a score closer to zero indicates that the regulator engages in a broader range of the activities.

The 2018 indicators build upon the experience of the 2013 edition of the indicators, as presented in the 2015 Regulatory Policy Outlook. The questionnaire has changed between vintages. The 2013 indicators covered economic regulators in six network sectors – electricity, gas, telecom, railroad transport infrastructure, airports and ports. In 2018, the sector coverage changed to sector coverage of the indicators changed to better reflect an evolving regulatory landscape. The 2018 indicators focuses on the following sectors: energy (previously electricity and gas), e-communications (previously telecommunications), rail transport, air transport (previously airports only) and water (new). The content of the questionnaires also changed, notably with an update to the independence section of the questionnaire to capture practical arrangements as well as formal mechanisms. Finally, the data validation process changed between the two surveys, with data reviewers ensuring that each question was answered in the 2018 review (Casullo, Durand and Cavassini, 2019[10])

The Indicators on the Governance of Sector Regulators complement the OECD Product Market Regulation survey. For more information about the methodology of the indicators and the questions included in the questionnaire, see (Casullo, Durand and Cavassini, 2019[10]).

The landscape of economic regulators

Following important early predecessors, modern economic regulators have grown in number in the past 40 years, created to accompany market reforms and restructuring. In an attempt to improve the performance of monopolised infrastructure sectors and in light of new opportunities for competition in these sectors, many countries pursued regulatory reform and restructuring programmes. These programmes became common in many countries in the 1970s and 1980s. The programmes attempted to introduce competition in some sector segments to reduce reliance on price and entry regulation, and were often accompanied by a shift in supply responsibility to private companies. The introduction of economic regulators are a key part of the liberalisation process; economic regulators' role includes the continuing regulation of certain sector segments that remain as natural and/or legal monopolies, as well as overseeing competitive access to networks (Joskow, Killiam and Killiam, 2000[11]).

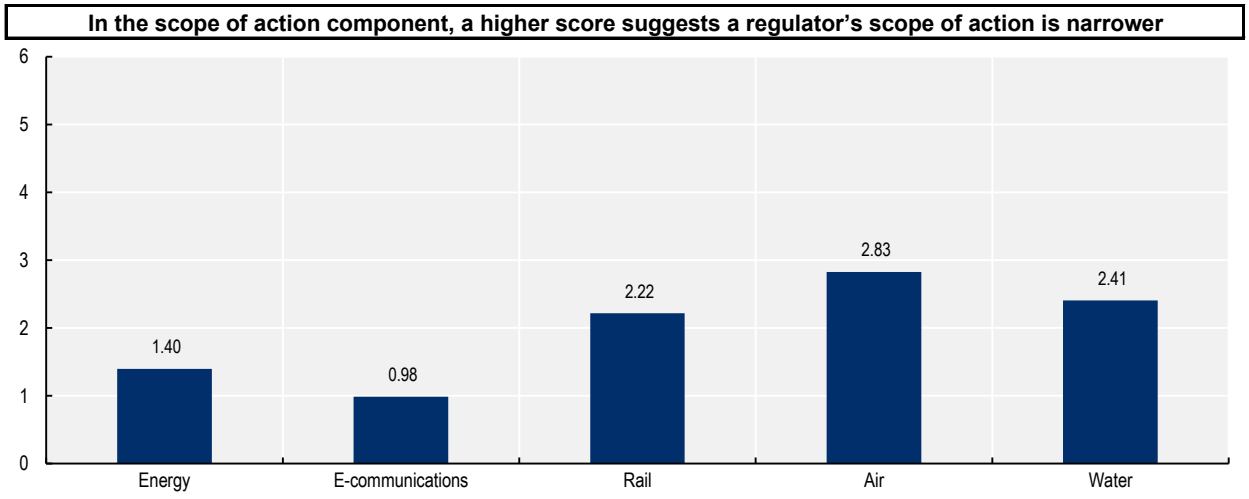
The Interstate Commerce Commission, established in the United States in 1887 in part to correct abuses in the railroad sector, is an ancestor of today's independent economic regulators (Gilligan, Marshall and Weingast, 1989[12]). The United Kingdom pioneered a new brand of economic regulation in the 1980s and 90s, introducing autonomous, sector-specific regulators with oversight over newly privatised industries (House of Lords, 2007[13]). Inspired by the pioneering work of Stephen Littlechild on the topic, the UK model of incentive regulation and distinct sector regulators spread rapidly (Littlechild, 1983[14]). The trend for the

creation of economic regulators gained momentum outside of Western Europe and the United States, in particular in Latin American countries from the 1980s (Box 5.2) and in South Asia, East Asia and the Middle East in the 2000s (Jordana, Levi-Faur and Marin, 2011[15]); (Gassner and Pushak, 2014[16]).

The functions assigned to regulators and the breadth of the scope of action of regulators vary within the sample. The scope of action component of the Indicators on the Governance of Regulators asks regulators whether they engage in a range of functions, including price regulation, reviewing contract terms, information collection, issuing industry and consumer standards, issuing guidelines/codes of conduct, enforcement, mediation, and more.[2] While the functions included in the indicators are not comprehensive of all of the possible functions of a regulator, the scores show the breadth of activities (conducted independently and with others) within those included in the survey. Regulators in the transport and water sectors tend to have narrower scopes of action, while e-communications and energy regulators report the broadest scope of action on average (Figure 5.1).

Figure 5.1. Energy and e-communications regulators have the greatest scope of action

Indicator scores for the scope of action component by sector

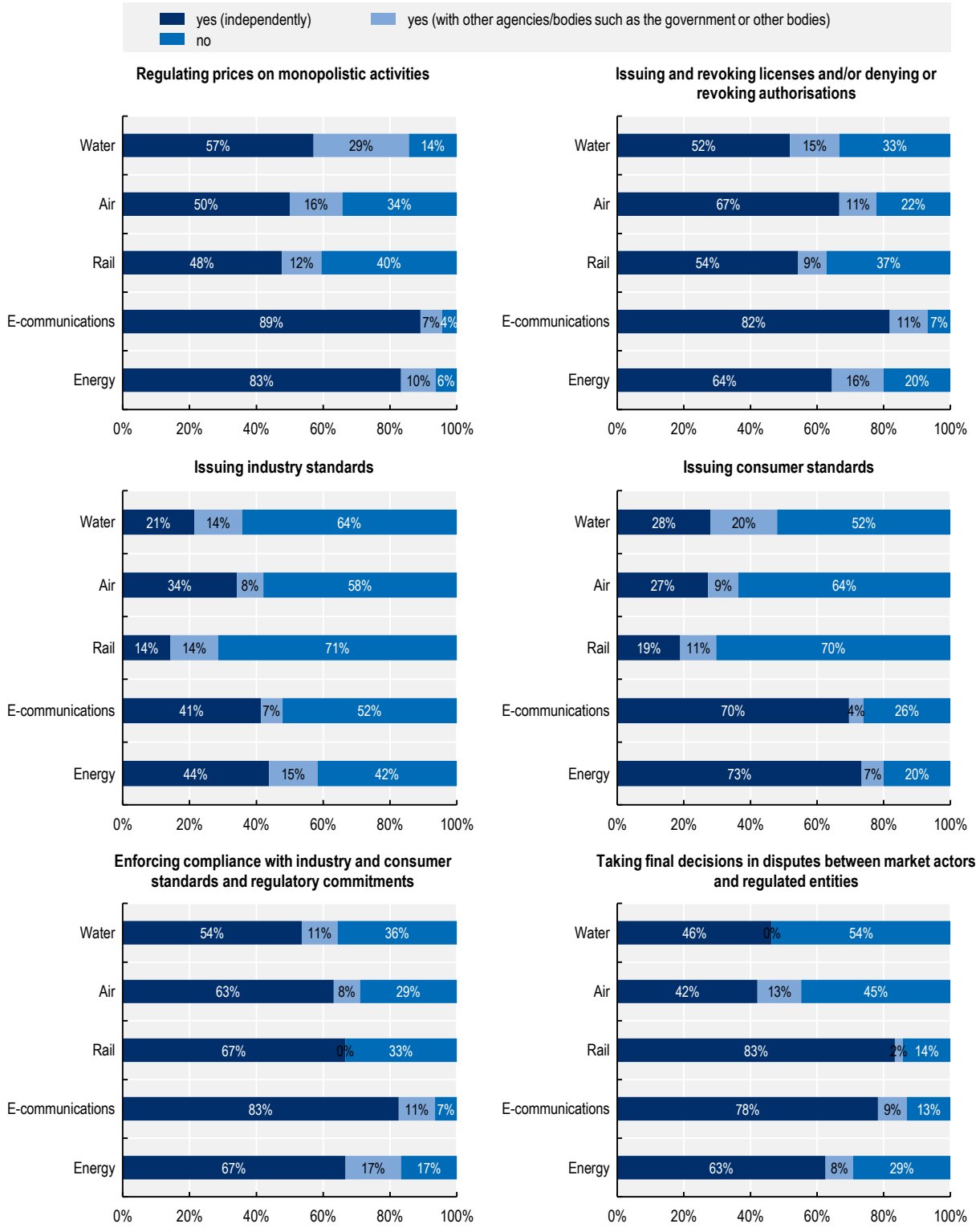


Note: The Indicators on the Governance of Sector Regulators are a composite shown on a scale of zero to six. In the scope of action component, a lower score indicates a broader scope of action and a score closer to six suggests the regulator has a narrower scope of action. The indicators are aligned with the Product Market Regulation indicators.
Source: 2018 OECD Indicators on the Governance of Sector Regulators.

Economic regulators may have the power to conduct their activities independently or in conjunction with other actors. More energy and e-communications regulators tend to perform functions independently when compared to regulators of other sectors (Figure 5.2). Most regulators across all sectors regulate prices, such as network usage and connection tariffs. Indeed, a strong majority of regulators in e-communications and energy sectors (89% and 83%, respectively) regulate prices independently. The lowest proportion of regulators with the power to regulate prices either independently or in co-operation with other bodies is the rail sector (with 60% of regulators reporting this function). Regulators in the water sector often regulate prices in co-operation with other agencies or bodies such as the government (with 29% regulating with other bodies). Most regulators also issue or revoke licenses, and mediate in disputes. Overall, a minority of regulators independently issue industry and consumer standards, while many enforce such standards. In cases where a regulator carries out its functions with other actors, promoting role clarity and managing stakeholder expectations about the scope of the regulator's role are important aspects of the governance of regulators.

Figure 5.2. Dispute resolution, regulating prices, enforcing compliance, and issuing and revoking licenses/authorisations are common activities for regulators in the sample

Proportion of regulators in the sample reporting the functions below



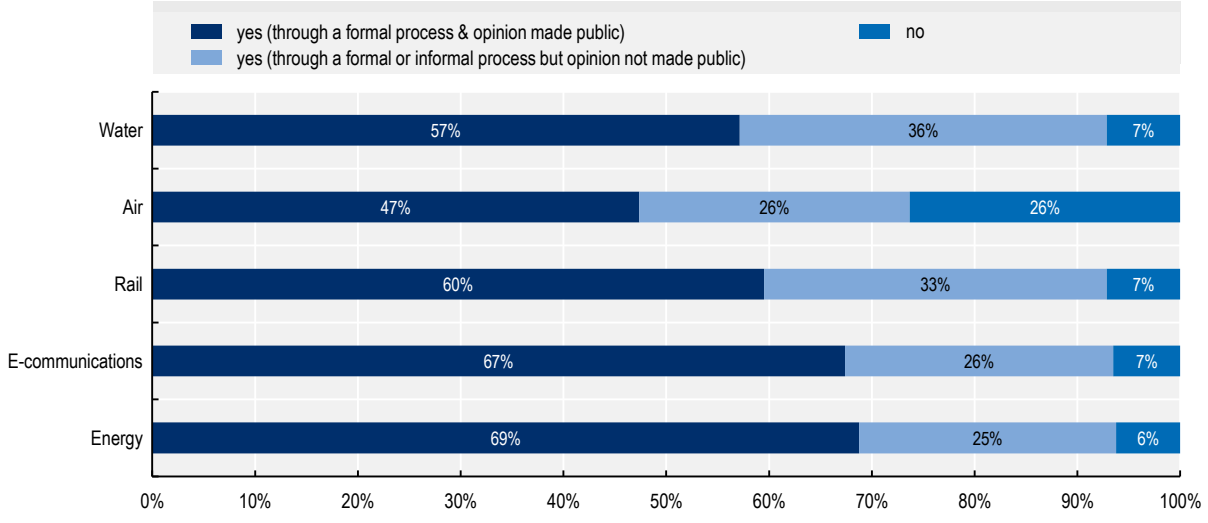
Source: 2018 OECD Indicators on the Governance of Sector Regulators.

In many jurisdictions, regulators have competences in more than one sector. The database contains data from 21 multi-sector regulators (Casullo, Durand and Cavassini, 2019[10]). Thirteen of these regulators are bi-sector, with two sectors covered in the survey falling under their purview. Certain sectors, especially transport sectors and energy and water, tend to be placed together within one regulator. Indeed, most of the bi-sector regulators group the rail and air transport sectors or the energy and water sectors under the umbrella of a single regulator. Some multi-sector regulators were created with multiple sectors under their purview from the outset. For example, the Latvian Public Utilities Commission (PUC) was given competencies in the e-communications, energy and water sectors. Some regulators have absorbed new sectors after their establishment. For example, the Croatian regulator HAKOM absorbed the rail regulator in 2014. In 2019, Finland merged the Finnish Transport Safety Agency, the Communications Regulatory Authority, and certain functions of the Transport Agency into a single agency. Other regulators also serve as competition authorities, such as the Australian Competition and Consumer Commission and the Authority for Consumers and Markets in the Netherlands.

Regulators can be useful partners for governments in policy making, given their proximity to markets and the market performance data they collect. Their mandate allows them to closely monitor the impact of government policies on sector actors and market structures. When regulators make recommendations or issue opinions on important legislative changes in regulated sectors, this can improve the quality of new policies by the government. While policy making is the responsibility of the executive, input from the regulator can provide data and evidence on the issues that need to addressed (OECD, 2016[9]). In many cases, regulators possess industry expertise and data that can be an important input to the policy-making process and government planning for the regulated sector. Moreover, through issuing opinions and recommendations, regulators can identify possible consequences of government policies for their governance and performance. Most regulators make recommendations or issue opinions on draft legislation proposed by the executive. While not in all cases through a formal process, more than 90% of the regulators in the energy, e-communications, water and rail sectors do so. The situation differs for air transport regulators, with less than half of them making recommendations or issuing opinions through a formal process and around a quarter not doing so at all (Figure 5.3).

Figure 5.3. Nearly a quarter of air transport sector regulators do not issue recommendations or opinions on draft legislation or policy documents

Regulator's response on the question of whether it makes recommendations or issues opinions on policy proposals by the executive, by topic and sector



Source: 2018 OECD Indicators on the Governance of Sector Regulators.

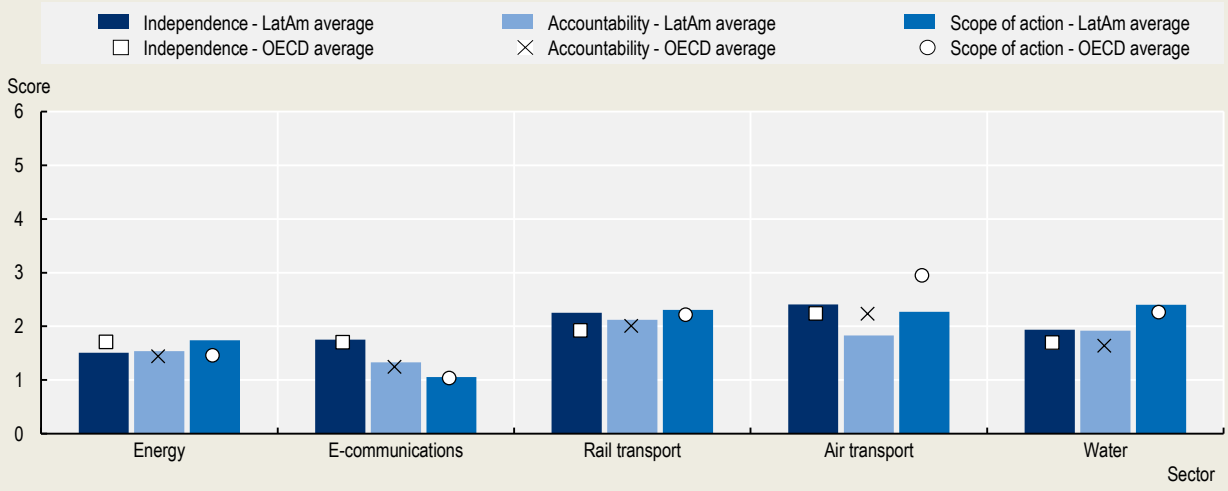
Box 5.2. Regional focus: Economic regulators in Latin American countries

Reform in the infrastructure sectors in Latin America over the last decades has transformed the landscape of regulation. The OECD Indicators on the Governance of Sector Regulators include data from 30 regulators in 7 countries from the region: Argentina, Brazil, Chile, Colombia, Costa Rica, Mexico and Peru. Chile, Colombia, Costa Rica and Mexico are OECD member countries.

Regulators in these countries tend to be independent (although there is variation between sectors) and focus on a single sector. The governance arrangements in Latin American regulators surveyed in five network sectors tend to be robust, relative to the OECD average.[3] The governance arrangements in place to preserve independence of the energy regulators and the accountability of air transport regulators are particularly strong in the Latin American countries. However, there is scope for improvement in the independence of rail, air transport and water regulators and the accountability of water regulators. Scope of action scores show that Latin American regulators engage in a similar number of activities as OECD countries in e-communications, rail transport and water. However, they have a narrower scope in the air transport sector and a broader scope in the energy sector.

Figure 5.4. Latin American regulators' governance arrangements in independence and accountability tend to be robust, relative to OECD average

Average scores in each component of the indicators, by sector



Source: 2018 OECD Indicators on the Governance of Sector Regulators.

A culture of independence supports the integrity of regulatory decisions

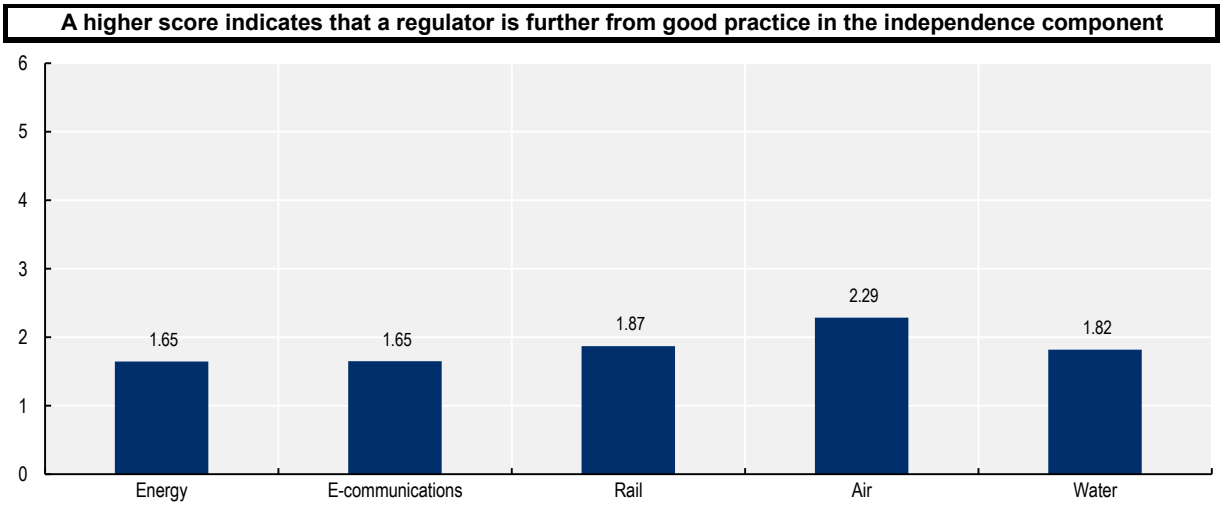
The independence of regulatory decision making is a product of many factors and safeguards. Formal or *de jure* independence is the degree to which legal arrangements protect the regulator's independence. However, independence by law is insufficient to guarantee an impartial regulator, free from undue influence (OECD, 2017[8]). The practical implications of formal arrangements, as well as staff behaviour and institutional culture, determine the *de facto* independence that regulators experience in practice. A culture of independence fosters trust amongst stakeholders that decisions show integrity, respecting long-term goals even when circumstances change.

Changes in the context in which a regulator operates can influence the independence it exhibits in practice, and decrease clarity on its role and competencies. Over the course of time, regulators may experience "pinch-points" where there might be potential for greater undue influence (OECD, 2017[8]). In other cases, changes will create a discrepancy between the regulatory framework and practice. A recent example is the COVID-19 pandemic, causing rapid changes across regulated sectors worldwide, which affect the role of the regulator and its interactions. In response to the pandemic, a number of regulators reported closer co-ordination and exchange of information with the executive, and more frequent contacts with both the executive and other stakeholders (OECD, 2020[4]). Shocks to the system could harm wider credibility and trust in a sector, crucial ingredients for markets to perform. Therefore, especially in times of change, regulators need to engage in a close and continuous dialogue with the executive and other stakeholders. By doing so, regulators can improve clarity on their role, and assess whether governance arrangements and legal competencies are still sufficient for the regulator to deliver upon its objectives independently and efficiently.

Figure 5.5 shows the independence safeguards for economic regulators across sectors. Among the regulators included in the sample, arrangements that safeguard the independence of regulators are closest to good practice in the energy and e-communications sectors.

Figure 5.5. Energy and e-communications regulators have more good-practice measures to promote independence than other sectors

Indicator scores for the independence component, by sector



Note: The Indicators on the Governance of Sector Regulators are a composite shown on a scale of zero to six. In the independence component, a lower score shows that a regulator better reflects good practice, while a score closer to six suggests that a regulator is further from good practice.
The Spanish National Commission of Markets and Competition (CNMC, with indicator data in the energy, e-communications and rail transport sectors) is subject to approval of different Ministries concerning essential decisions to hire and retain its permanent staff and to design and expend its allotted budget. Budget restrictions apply in particular to human resources and the possibility to hire studies or special assistance services, like research or IT. Likewise, any modification of the organisation of the CNMC requires a legal act adopted by the Government.
Source: 2018 OECD Indicators on the Governance of Sector Regulators.

Economic regulators of network sectors in OECD countries are overwhelmingly defined by law as independent bodies

An elementary measure of *de jure* independence is the legal status of the regulator relative to the executive. Through legislation, a regulator can be set up as an independent body outside the ministry structures, or as an administrative unit within the ministry. As mentioned in the 2012 Recommendation of

the Council on the Regulatory Policy and Governance, "independent regulatory agencies should be considered in situations where:

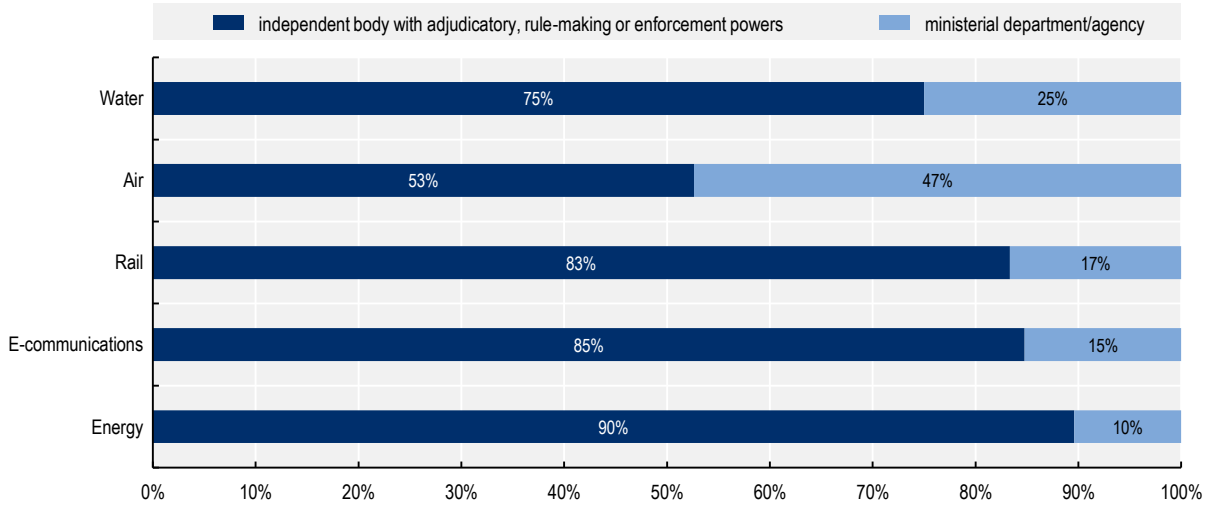
- There is a need for the regulatory agency to be independent in order to maintain public confidence;
- Both the government and private entities are regulated under the same framework and competitive neutrality is therefore required; and
- The decisions of regulatory agencies can have significant economic impacts on regulated parties and there is a need to protect the agency's impartiality" (OECD, 2012[5]).

Most regulators in the sample are defined by law as independent bodies with adjudicatory, rule-making or enforcement powers. EU Directives for energy and rail, mandating the creation of independent national regulatory authorities (NRAs) in EU member states, may be one reason for this (European Parliament and the Council of the European Union, 2009[17]; European Parliament and the Council of the European Union, 2009[18]; European Parliament and the Council of the European Union, 2012[19]).[4] Given the high presence of EU countries across the OECD sample and the wider sample of countries,[5] trends among EU countries can affect sample observations. However, also across the sample of non-EU regulators in OECD and non-OECD countries, most regulators qualify as independent bodies according to their legal status.[6] Among OECD countries, the share of legally independent regulatory bodies is 87% for the energy sector, 84% for the e-communications sector and 83% for the rail sector. In the air transport and water sectors, the share of independent regulators is lower, with 50% of air transport regulators and 76% of water regulators qualifying as independent bodies. These percentages are roughly the same across the broader sample of both OECD and non-OECD countries (see Figure 5.6).

Within the two archetypes of independent and ministerial regulators, regulators may be equipped with a range of good-practice governance arrangements to safeguard independence. As well as asking regulators whether they are defined by law as independent or ministerial bodies, the questionnaire underlying the Indicators on the Governance of Sector Regulators captures a range *de jure* and *de facto* characteristics that contribute to the independence a regulator may experience in practice. The sub-sections that follow show how regulators reflect common attributes to encourage independence.

Figure 5.6. The energy sector has the highest share of regulatory bodies with an independent legal status

Legal status of regulators, by sector



Source: 2018 OECD Indicators on the Governance of Sector Regulators.

The de jure independence of regulators is complemented by restrictions on leadership activities to prevent undue influence in most jurisdictions

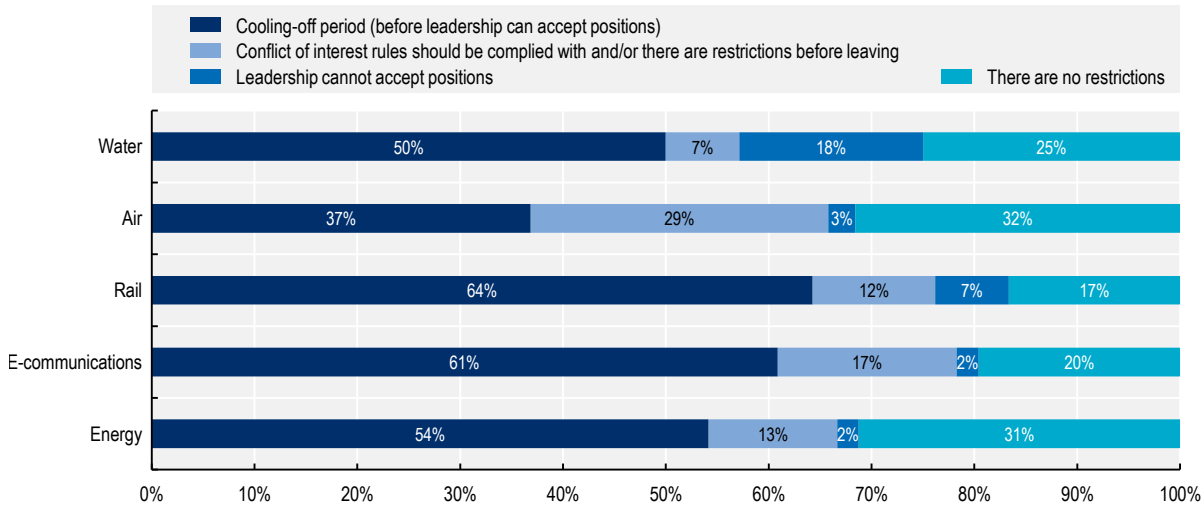
Boards or agency heads are ultimately responsible for the regulator's decisions, and therefore potentially subject to greater pressure from government and industry bodies than professional staff (OECD, 2016[7]). Sound leadership arrangements can prevent potential conflicts of interest, and thereby bolster the independence of the board or head of the agency.

There are a number of patterns across regulators in the arrangements regarding the agency's leadership. First, most regulators are led by a board. Only in the air transport sector is this different, where the majority of regulators have a single agency head instead. In general, a board may be considered more reliable for decision making as a multi-member decision making body is expected to ensure a greater level of independence and integrity (OECD, 2010[20]). However, the potential value of a multi-member compared with a single-member decision making model depends on several factors. For example, this may be affected by the potential commercial/safety/social/environmental consequences of regulatory decisions or the degree of judgement required where regulation is principles-based or particularly complex (OECD, 2014[6]).

Second, while restrictions on past employment for leadership exist only in a minority of cases, the legislation does usually define the skills required for members of the leadership. Moreover, restrictions on external activities during their term in office and in the immediate post-employment period are common. For a majority of regulators in the sample, leadership face restrictions in accepting jobs in the government and/or the regulated sector after their term of office, such as a cooling-off period (Figure 5.7).

Figure 5.7. The leadership of most regulators cannot accept government and/or industry positions related to the regulated sector directly after term

Restrictions on regulator's leadership after their term to accept government and/or sector positions related to the regulated sector, by sector



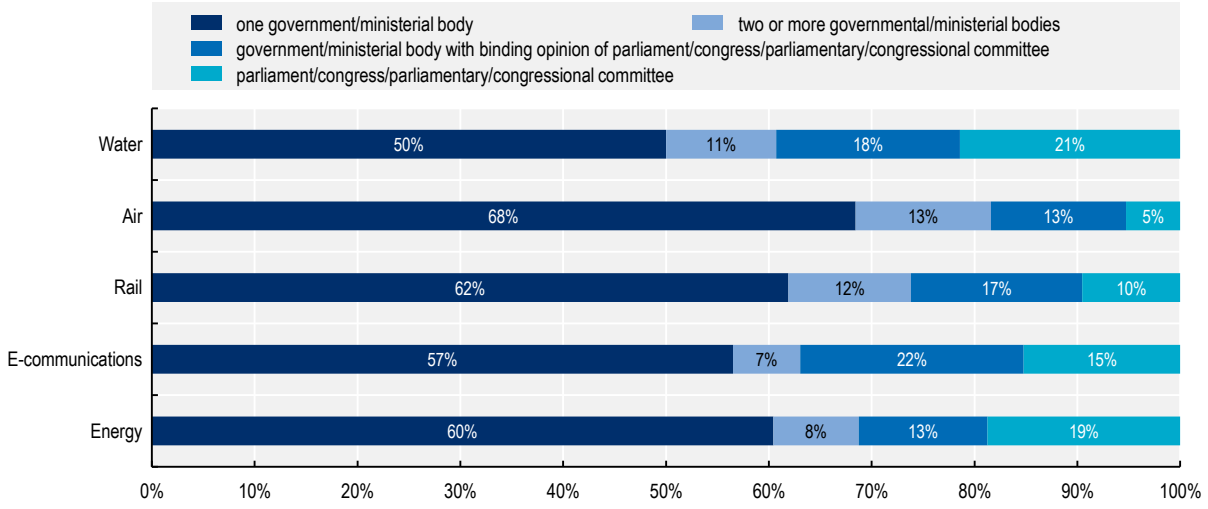
Source: 2018 OECD Indicators on the Governance of Sector Regulators.

Third, in most cases, a government or ministerial body appoints the members of the leadership of regulators (Figure 5.8). The results build upon findings in the 2018 Regulatory Policy Outlook, and show that a government or ministerial body has the legal authority to appoint the regulator's leadership in a majority of cases in all sectors (OECD, 2018[2]). In selecting the new leadership, there is a need for

transparency in the nomination and appointment process (OECD, 2017[8]). Among 44% of the regulators in the sample, the selection process of the agency head or board members involves an independent selection panel (Figure 5.9). Among OECD countries, this is slightly higher, with an independent panel being involved for 47% of the regulators.

Figure 5.8. A government or ministerial body usually appoints the regulator's leadership

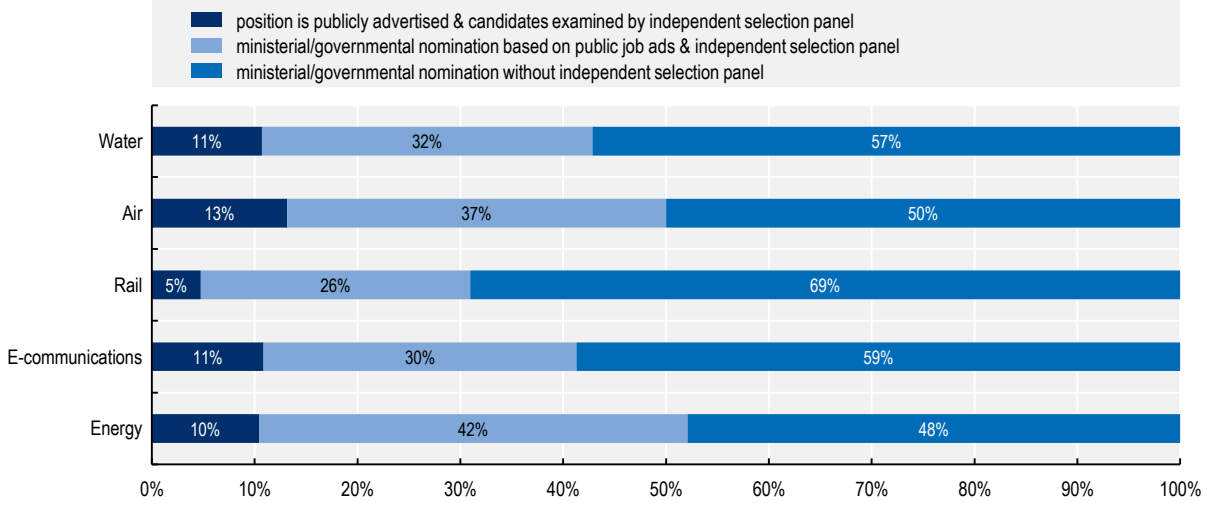
Body that has the legal authority to make the final appointment of the agency head/board members



Source: 2018 OECD Indicators on the Governance of Sector Regulators.

Figure 5.9. In most cases, the selection process does not involve an independent selection panel

Process for selecting the agency head/board members



Source: 2018 OECD Indicators on the Governance of Sector Regulators.

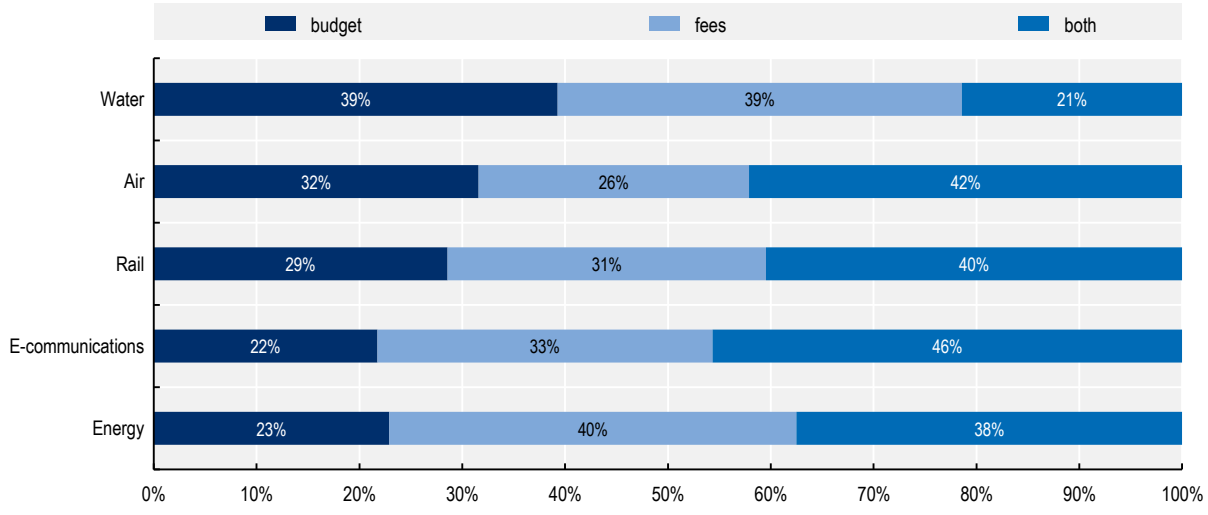
Fourth, regarding arrangements for the dismissal of leadership, the government can dismiss members of the board in the majority of the regulators. In most cases however, dismissal is only possible within a given set of criteria. This provides a safeguard against arbitrary dismissal of the leadership, which could threaten the regulator's independence.

There is room for improvement in the regulators' funding arrangements, to increase their independence

The way in which a regulator is funded may affect its ability to carry out its mandate independently. Not only does a regulator need sufficient funding to deliver upon its objectives, but the funding should also be determined in a way that prevents undue influence. Broadly speaking, regulators obtain their funding through fees from industry, the state budget, or a mix of both (Figure 5.10). The share of regulators funded exclusively through state budgets is highest in the water sector, while the energy sector has the greatest proportion of regulators funded exclusively through fees. For e-communications and the transport sectors, the dominant mode is a regulator funded through a mix of both fees and state budget.

Figure 5.10. The share of regulators funded exclusively through the state budget is highest in the water sector

Sources of a regulator's funding, by sector



Notes: The authors derived this information from responses to two questions on the Indicators of the Governance of Sector Regulators questionnaire, and confirmed the information with desk research. The Indicators on the Governance of Sector Regulators survey does not ask outright whether regulators are funded through budget, fees, or a combination of the two. Rather, it asks (1) "If the regulator is financed in total or in part through fees paid by the regulated sector, who sets the level of the fees?" and (2) "If the regulator is financed in total or in part through the national budget, who is responsible for proposing and discussing the regulator's budget?" If the regulator specified a responsible body for both questions, it was assumed that the regulator was funded through a mix of both. If the regulator only specified a responsible body for one of the two questions, and answered the other question with 'n/a', it was assumed that the regulator was funded exclusively through that specific source.
Source: 2018 OECD Indicators on the Governance of Sector Regulators.

In case the regulator is funded through fees, these can be paid by the regulated entities as a percentage of their net turnover or income, or in other cases based on the entity's activity level (such as cubic meter of water supplied in case of a water company). An appropriate cost-recovery mechanism is essential to set the right level of the fee and make sure the regulator has sufficient funding (OECD, 2016[7]). Regulators funded through fees enjoy greater freedom where they are able to set the level of fees themselves within criteria set in legislation. For regulators in the sample that are funded by fees, roughly half of them sets the level of the fees themselves. In most other cases, the regulator proposes the fee for approval by either parliament, congress or the executive.

When the executive is responsible for proposing and discussing the regulator's budget, or can set the level of the fees, it may be able to exercise undue influence on the regulator's activities by reducing the regulator's resources and capacity to act. Certain safeguards can prevent this from occurring. For example, multi-annual budgeting through a transparent and clearly defined process will be less contingent to short-term pressure from political or electoral imperatives (OECD, 2017[8]). However, for the regulators in the sample, budget appropriations tend to be annual.

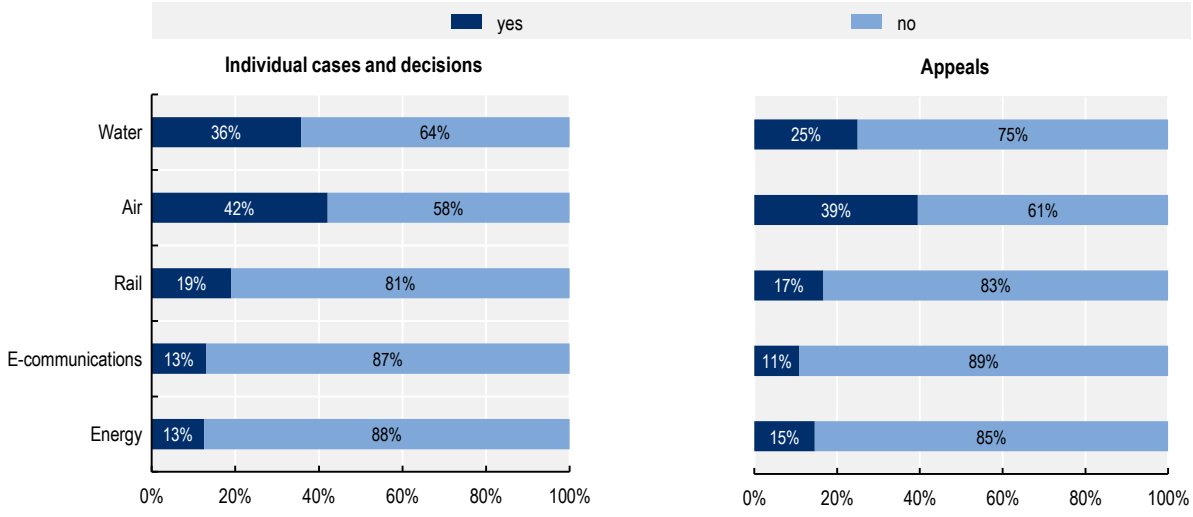
Regulators usually only receive guidance on their long-term strategy, which enhances their independence

Regulators need to make and implement impartial, objective and evidence-based decisions that will inspire trust in public institutions and encourage investment. The role of the regulator should be made clear in legislation, and guidance from the government outside the legislative process that directs the regulator in its role and actions should be avoided (OECD, 2017[8]). While receiving guidance from the government on its long-term strategy can ensure that its strategy is in line with broad policy objectives, more direct government involvement in the regulator's work programme, individual regulatory decisions and appeals processes limits independence.

Most regulators do not receive government guidance on individual cases or regulatory decisions and on their handling of appeals. The air transport sector shows the greatest proportion of regulators that receive guidance in these topics, with roughly 40% of air transport regulators reporting that they do receive government guidance in individual cases or regulatory decisions and appeals (Figure 5.11).

Figure 5.11. Air transport sector regulators receive more guidance from the government in their day-to-day work than regulators in other sectors

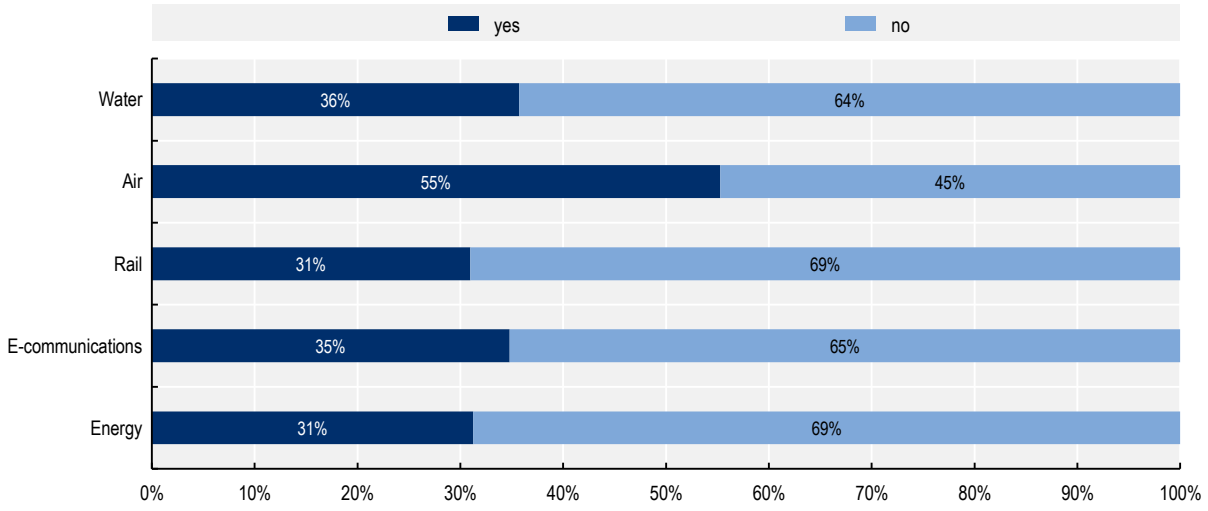
Regulator's response on the question of whether it can receive guidance from the government, by topic and sector



Source: 2018 OECD Indicators on the Governance of Sector Regulators.

Figure 5.12. Most regulators do not receive guidance from the government on their work programmes

Regulator responses on the question of whether it can receive guidance from the government on work programmes, by sector

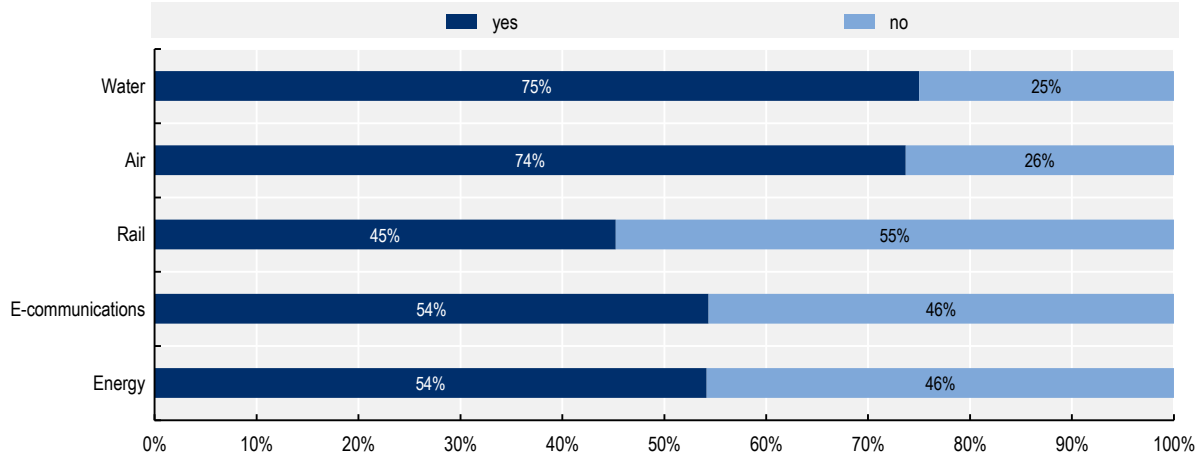


Notes: The questionnaire asks whether regulators receive government guidance on work programmes, which it defines as a document and/or statement outlining how the regulator intends to implement priorities and objectives. This work programme is generally on a shorter-term horizon (1 year, for instance). Most regulators do not receive guidance from the government on their work programmes (The exception is in the air transport sector, where more than half of regulators receive government guidance on their work programmes.)
Source: 2018 OECD Indicators on the Governance of Sector Regulators.

The questionnaire asks regulators whether they receive guidance from the government on their long-term strategy, a document and/or statement outlining priorities and objectives of the regulator with a longer-term horizon (for example, three or five years). In all sectors except rail transport, a majority of regulators receive government guidance on their long-term strategy (Figure 5.13).

Figure 5.13. Government guidance on long-term strategy is common in all sectors but rail transport

Regulator responses on the question of whether it can receive guidance from the government on long-term strategy, by sector



Source: 2018 OECD Indicators on the Governance of Sector Regulators.

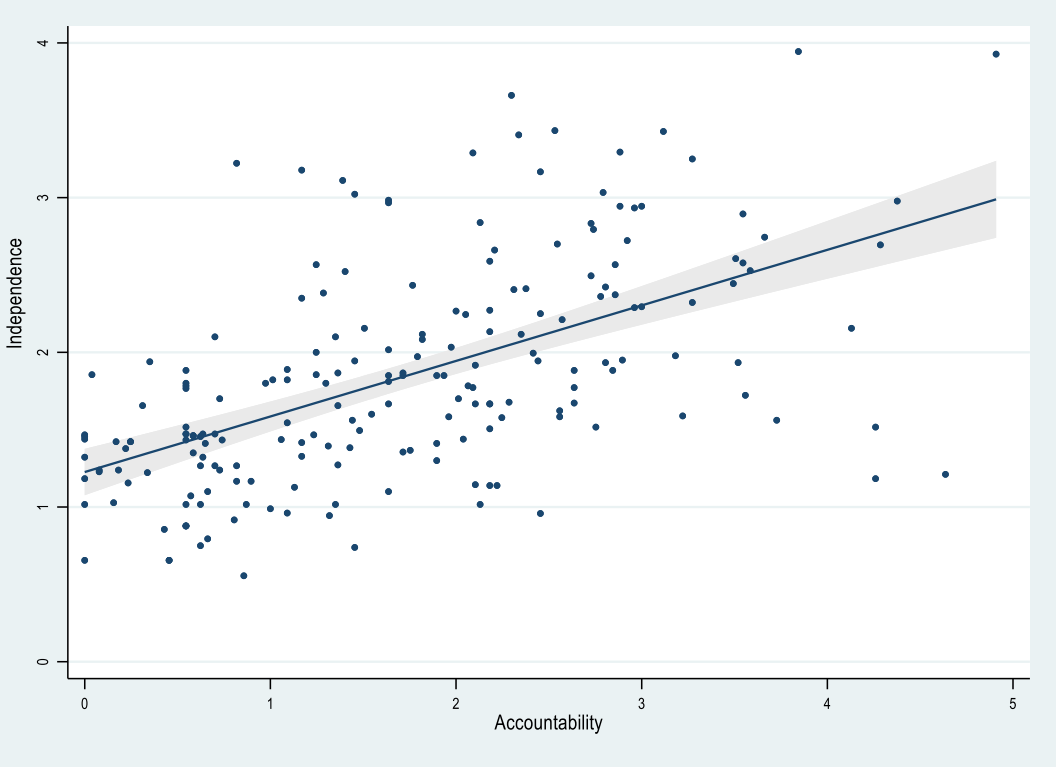
By receiving government guidance on long-term strategies, regulators are able to take on board long-term policy goals by the government when setting their strategic objectives, without necessarily being influenced by the day-to-day political environment in the execution of their tasks.

Regulators' accountability arrangements vary between sectors

Well-designed arrangements to promote accountability, also discussed in chapters 2 and 3, provide information and opportunities for appropriate input from stakeholders. Measures to enhance the transparency of a regulator's actions also serve to collect important input for regulatory actions. Measures to safeguard independence and allow for regulatory discretion need to be balanced with measures that facilitate appropriate oversight from the executive, legislature, judiciary, regulated entities and the public, in order to hold regulators to account. For this reason, accountability can be seen as the other side of the coin of independence (OECD, 2014[6]). The data on the governance of regulators confirms that accountability and independence go hand-in-hand in practice, as on average regulators showing greater adoption of good-practice independence arrangements also show a greater adoption of accountability arrangements (Figure 5.14).

Figure 5.14. Regulators with greater independence are also more accountable

Scatterplot of independence and accountability indicator scores for regulators, across all sectors and countries



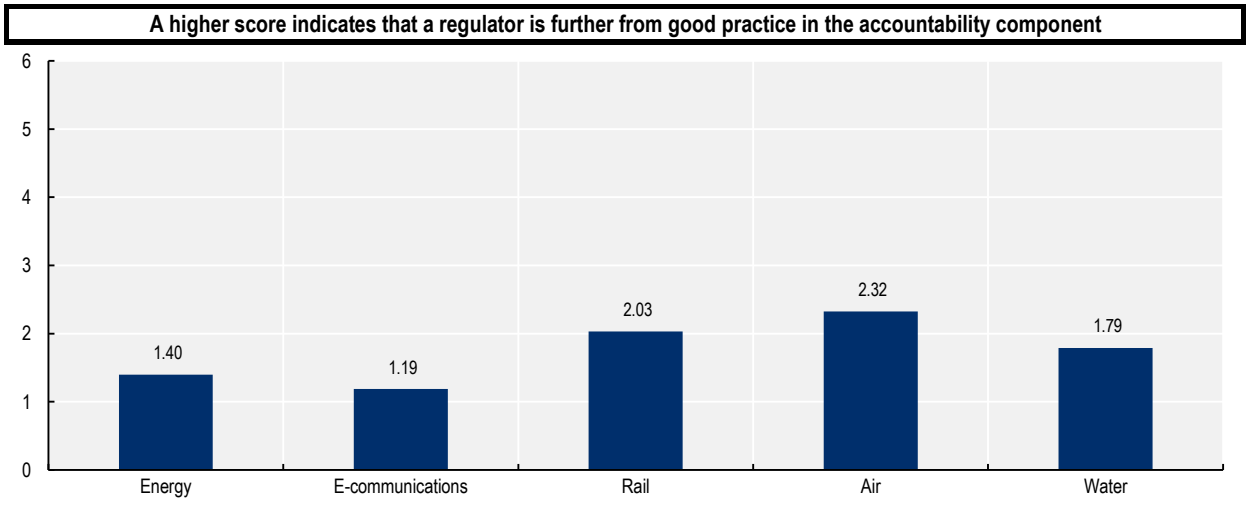
Notes: The Indicators on the Governance of Sector Regulators are a composite shown on a scale of zero to six. In the independence and accountability component, a lower score shows that a regulator better reflects good practice, while a score closer to six suggests that a regulator is further from good practice. Grey area indicates a 95% confidence interval based on a linear fitted regression line in Stata. Spearman's rank correlation coefficient is equal to 0.6034 (with a p-value of 0.0000). Total number of observations is 200.

The Spanish National Commission of Markets and Competition (CNMC, with indicator data in the energy, e-communications and rail transport sectors) is subject to approval of different Ministries concerning essential decisions to hire and retain its permanent staff and to design and expend its allotted budget. Budget restrictions apply in particular to human resources and the possibility to hire studies or special assistance services, like research or IT. Likewise, any modification of the organisation of the CNMC requires a legal act adopted by the Government.
Source: Based on OECD calculations.

On average, lower scores for regulators in the energy and e-communications sectors show that regulators in these sectors have adopted more of the good-practice arrangements to safeguard accountability identified in the survey Figure 5.15). Regulators in the water and transport sectors show lower adoption of these arrangements. While beyond the scope of this chapter to analyse in-depth, it is important to note that the market characteristics of regulated sectors are among the determinants for the appropriate institutional design of regulators including the design of accountability and independence arrangements, alongside political, cultural, and practical considerations.

Figure 5.15. Regulators in the energy and e-communications sectors have the strongest governance arrangements to promote accountability

Average scores for the accountability component, by sector



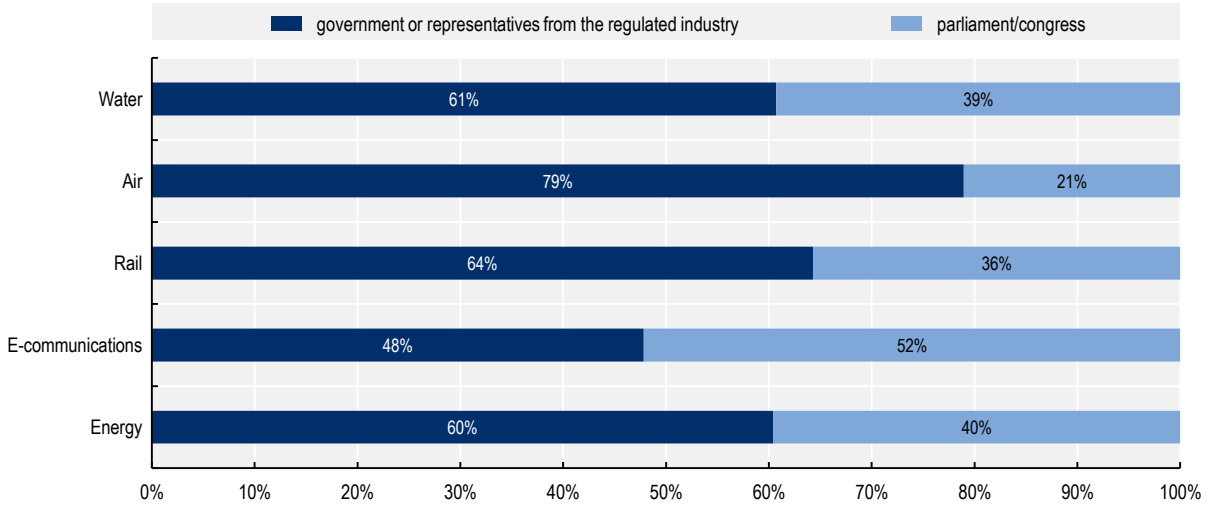
Note: The Indicators on the Governance of Sector Regulators are a composite shown on a scale of zero to six. In the accountability component, a lower score shows that a regulator better reflects good practice, while a score closer to six suggests that a regulator is further from good practice.
Source: 2018 OECD Indicators on the Governance of Sector Regulators.

Regulators maintain direct lines of accountability to government or parliament

Defining formal arrangements for accountability is one of the key elements in a more accountable governance framework, whether that be direct accountability to the legislature or to the government or representatives of the regulated industry. Most regulators in the sample are accountable to the government or representatives from the regulated industry (Figure 5.16). Good practice for maintaining accountability differs depending on the degree of independence of the regulator and whether the regulator reports to the executive or the legislature. The importance of defined procedures and mechanisms for reporting is particularly relevant for independent regulators that are accountable to government, in order to avoid compromising the actual or perceived independence of decision making (OECD, 2014[6]).

Figure 5.16. E-communications is the only sector in which a majority of regulators are directly accountable to the legislature

Proportion of answers to the question "To whom is the regulator directly accountable?", by sector



Note: The questionnaire response options for this question are "government or representatives from the regulated industry" and "parliament/congress"
Source: 2018 OECD Indicators on the Governance of Sector Regulators.

Regardless of whether regulators report to government or to parliament, independent regulators' reporting should occur through clear and systematic channels. One such channel is a regular activity report. The data show that most regulators are required to produce a report on their activities on a regular basis (86% across all sectors). Regular presentations to parliament serve an additional purpose: raising awareness of the value of the regulator. When regulators present an activity report in person, it allows regulators to discuss with legislators and answer any questions. The data show that fewer regulators present this activity report to the legislature in person, both among regulators directly accountable to parliament and those accountable to the government or industry. The majority of regulators directly accountable to parliament present an activity report to parliamentary committees. Among those accountable to government or the regulated industry, less than one-third of regulators present a report on their activities to the legislature.

There is room for improvement on performance reporting

Performance measures both of the sector and of the regulator are critical inputs to decision making. Measuring sector performance helps regulators identify issues and understand the impact of regulation. Understanding and reporting on the regulator's performance is just as important to demonstrate the effectiveness of the regulator and drive improvements (OECD, 2014[21]). The Indicators on the Governance of Sector Regulators capture whether the regulator collects and publishes certain information about the performance of the sector, including the market performance of the regulated sector (for example, the number of network faults or levels of investment and service performance for users) and the economic performance of the regulated sector (such as level of competition and investment outcomes). It also captures whether regulators collect and publish information on the regulators' performance, including the following:

- **Operational service delivery of the regulator:** information relating to the delivery of the functions and responsibilities of the regulator (for example the number of inspections, licensing/permit provision).

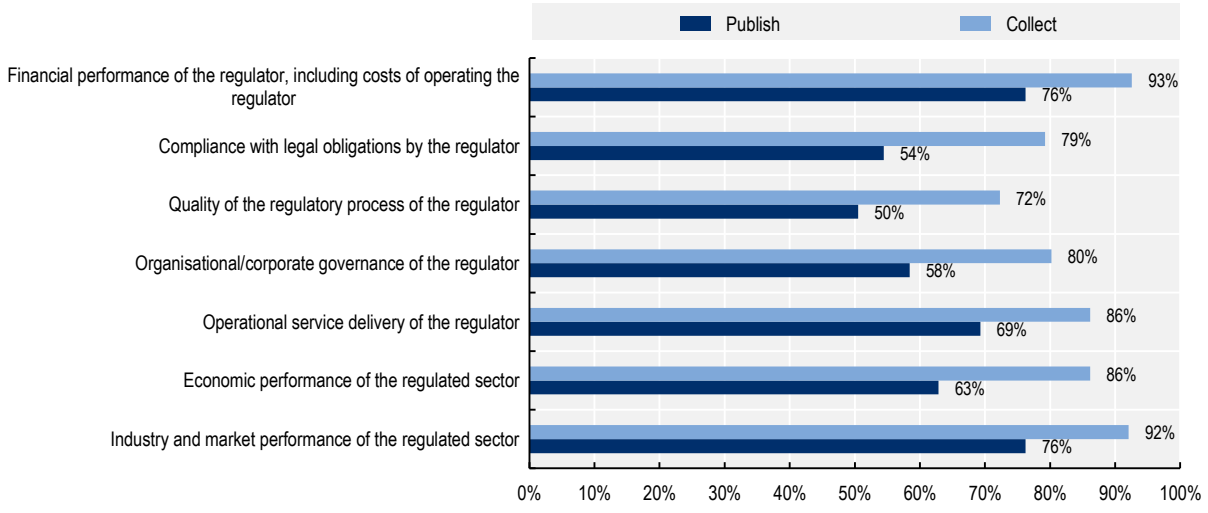
- **Organisational/corporate governance performance of the regulator:** information relative to the internal functioning of the regulator (for example, the timeliness of completion of planned activities, staff survey results and information about leadership performance).
- **Quality of regulatory process of the regulator**: information about the performance of the tools and processes used in decision making such as impact assessment, stakeholder engagement, and ex-post evaluation.
- **Compliance with legal obligations by the regulator:** information about the regulators' compliance with legal requirements (such as the fulfilment of information obligations or the proportion of decisions taken that are upheld).
- **Financial performance of the regulator:** information including the costs of operating the regulator, budget spending, revenue, and direct and indirect costs incurred.

Figure 5.17 shows that most regulators collect and publish information about the performance of the sectors they regulate, including the economic performance of the sector and the industry and market performance of the sector. Regulators also commonly collect and publish information about their financial performance, with 93% collecting such information and 76% publishing.

Other categories of regulators' performance information are less commonly collected and published. Twenty per cent or more of regulators in the sample do not collect information on the quality of their regulatory processes, their compliance with legal obligations and the organisational governance of the regulator. Less than 60% publish this information on their website. While 86% collect information about the operational service delivery of the regulator, only 69% publish this information. Given the importance of performance evaluation in informing the actions of the regulator, further work on performance evaluation is warranted (see Chapter 2).

Figure 5.17. Fewer regulators collect and publish some types of performance information

Proportion of respondents indicating that they (a) collect and (b) publish information under the performance information categories indicated below



Source: 2018 OECD Indicators on the Governance of Sector Regulators.

Regulators have the opportunity to enhance or build upon traditional tools to better understand and communicate sector performance. The OECD working paper "Shaping the future of regulators: The impact of emerging technologies on economic regulators" highlights examples of regulators that harness the

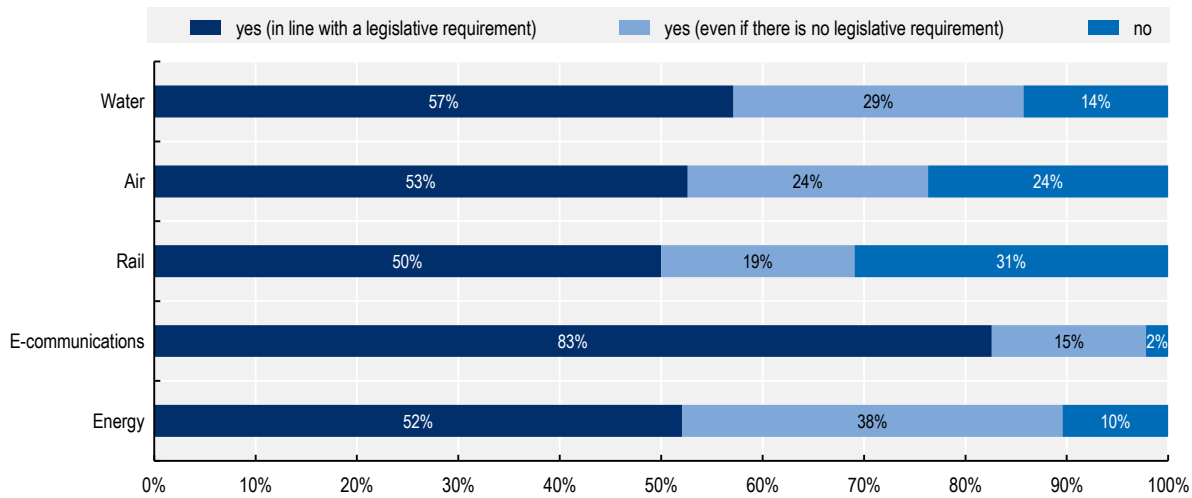
power of data to improve transparency and create incentives to improve market functioning. A data-driven approach provides the opportunity for regulators to provide targeted information to stakeholders, including about service quality, to facilitate informed choices by consumers. For example, the French e-communications regulator (*l'Autorité de régulation des communications électroniques* – ARCEP) publishes maps with data and information about operators' coverage and service quality across the country. This "sunshine regulation" approach is expected to create incentives to improve overall market functioning (OECD, 2020[3]).

Most regulators publish draft decisions and collect feedback from stakeholders

Stakeholder engagement is an important component of accountability and transparency, and helps regulators collect input for decision making. Regulators may conduct stakeholder engagement relating to regulatory decisions as well as other aspects of their work, such as operational policies (OECD, 2014[6]). Most regulators publish draft decisions and collect feedback from stakeholders, even if there is no formal requirement to do so (Figure 5.18). Compared to peers in other sectors, a greater proportion of regulators in the transport sectors do not publish draft decisions for stakeholder comment. Box 5.3, which summarises results from the expansion of the indicators to twelve energy regulators in francophone African countries, shows that stakeholder engagement is an area for improvement in this group.

Figure 5.18. Most regulators publish draft decisions and collect feedback from stakeholders

Proportion of answers to the question "Do regulators publish draft decisions and collect feedback from stakeholders?" by sector



Source: 2018 OECD Indicators on the Governance of Sector Regulators.

Box 5.3. Regional focus: Energy regulators in Francophone African countries

The OECD expanded the Indicators on the Governance of Sector Regulators to 12 energy regulators in francophone African countries (these data are not included in the figures and charts in the rest of the chapter). Twelve regulators participated covering Algeria, Benin, Burkina Faso, Burundi, the Central African Republic, Côte d'Ivoire, Madagascar, Mali, Mauritania, Niger, Senegal, and Togo. This sample showed that many of these regulators report sharing some formal governance arrangements to their longer-established OECD peers, especially in the independence component of the indicators. The

greatest differences between this sample and energy regulators in OECD countries lie in the "scope of action" component, with OECD regulators tending to have broader powers.

Most of the surveyed regulators are independent authorities (83%). Many have good-practice measures in place to safeguard independence in staffing and budgeting. However, some regulators lack good-practice protections against government interference in regulatory decision making, with more than half of surveyed regulators reporting that they could receive direction from the government on independent cases or regulatory decisions. Additionally, selection, appointment and termination processes for agency leadership show a gap between practice in the sample and in regulators in OECD countries. The legislation defines the skills required by agency leadership in only around one-quarter of regulators in the sample, compared to 58% of the OECD sample. A single government body appoints the leadership of the majority (75%) of regulators in the sample (compared to around 62% of the OECD sample). Government decisions alone can terminate the leadership of the majority of regulators in the sample (85%, compared to around 78% of regulators in OECD countries), although terminations in most regulators must occur within set criteria.

The data show an opportunity for improvement in the accountability of regulators in this sample, including through the use of stakeholder engagement. More than half of the regulators in the sample do not publish draft decisions for comment by stakeholders. While two-thirds of regulators must publish a report on their activities, none of the regulators present an activity report to the legislature.

Source: OECD 2018 Indicators on the Governance of Sector Regulators.

Many regulators publish responses to comments to increase transparency of decision making and demonstrate appropriate consideration of input received from stakeholders. The data show that most regulators that do publish their draft decisions for comment also provide feedback on comments received from stakeholders (only 6% of these regulators do not respond to comments).

While careful and strategic planning can help regulators provide timely and meaningful opportunities for engagement to stakeholders, situations arise where regulators may have to adapt consultation processes. The COVID-19 crisis provides an example; in the face of an unforeseen crisis, regulators had to adapt public consultation processes during the pandemic's early stages. Some public consultations were delayed, deferred, or held remotely in light of stakeholders' limited ability to engage. Other consultation processes related to COVID-19 measures were expedited in order to collect stakeholder input into urgent decisions rapidly. For example, the United Kingdom's Financial Conduct Authority offered a consultation period on measures to ease the financial burden for retail lending consumers over a period of 72 hours. In this rapidly evolving context, regulators encounter trade-offs between their ability to offer full-length, timely consultations and their need to take quick action (OECD, 2020[4]).

Researchers attempt to uncover the relationship between governance of regulators and sector performance

Exploring the links between the governance of regulators and the performance of regulated sectors can increase our understanding of the value of economic regulators. This is a challenging research field. Issues include how to define sectoral performance, how to account for the lag between decisions and their effects in downstream and upstream markets, or how to isolate the effects of the governance of regulators on sector performance, as the counterfactual is usually absent.

Recent and original research by Université Paris Dauphine (described in Box 5.4) uses data on the European members of the OECD included in the Indicators on the Governance of Sector Regulators to understand relationships between the governance of economic regulators and sectoral performance.

The preliminary results indicate correlations between governance arrangements and sector outcomes such as price levels and investment. Further research is needed to understand the drivers of the relationship between evolutions in governance and changes in sector performance, including the unraveling of the potential causal mechanisms. The results nevertheless provide interesting insights and promising avenues for research to understand better the links between the governance of regulators and the performance of the sectors they oversee.

Box 5.4. New research using the OECD Indicators on the Governance of Sector Regulators

Université Paris Dauphine researchers have used the data from the Indicators on the Governance of Sector Regulators to explore relationships between the governance of economic regulators and sectoral performance (Brousseau, Eric and Gonzalez-Regalado, forthcoming[22]). The researchers apply text modelling and algorithmic analysis to the database behind the indicators. These methods allow the researchers to identify dimensions according to their degree of correlation. This approach differs from the OECD Indicators on the Governance of Sector Regulators methodology, which results in composite indicator scores developed from equally weighted components. The indicators group data using *ex ante* assumptions, while this methodology reflects the importance of elements based on the statistical analysis of observations.

Using these methods, the researchers define four dimensions to help describe the governance of regulators in the sub-sample. While these dimensions use the same terms as the components of the indicators (namely, *independence* and *accountability*), the two categorisations are distinct. The four dimensions are: independence from government, the stringency of scrutiny over the regulator ("checks and balances"), the scope of market monitoring capabilities of the regulator, and the strength of its bureaucratic ability to monitor operators. While independent from each other, the first two dimensions together characterise the *degree of independence and accountability* of the regulatory agency, while the latter two capture the scope and the vectors of its *authority over the sectoral stakeholders*.

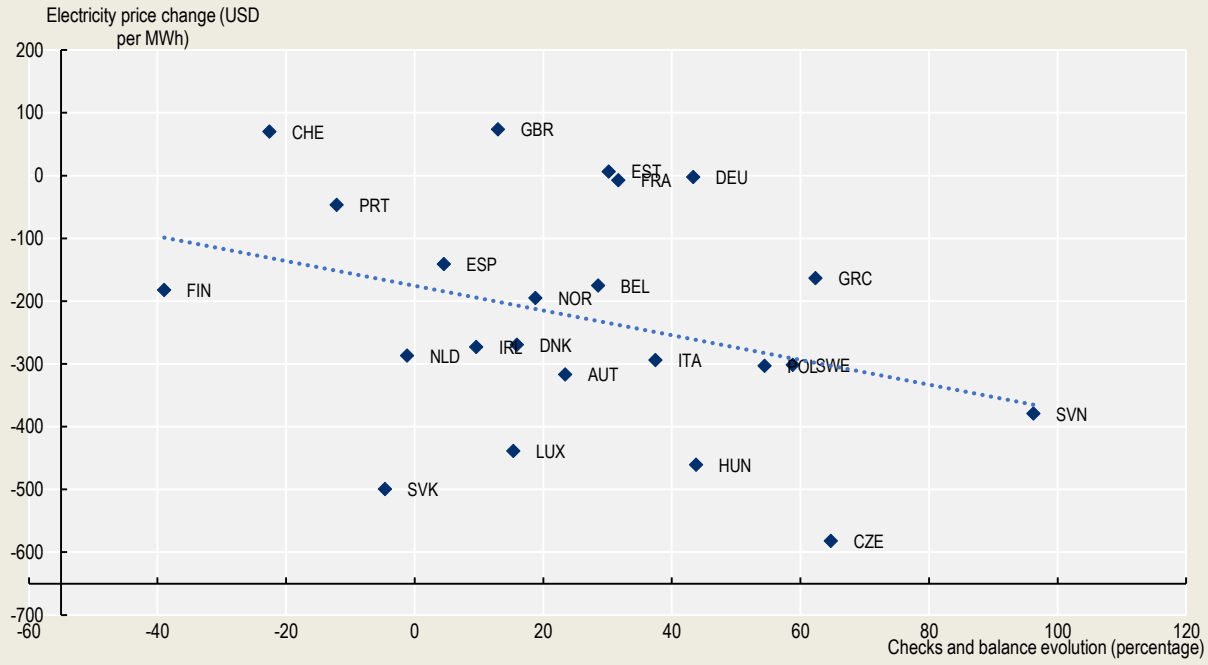
The research compares the 2013 and 2018 surveys to capture evolutions in governance arrangements over time, and looks for correlations between these evolutions and sector performance. Other explanatory factors, such as national income, geography, institutional quality or market regulation stringency were taken into consideration to check these correlations.

There are however limitations to the methodology. Changes in a dimension score between years might be associated with variations in other dimensions. Nevertheless, indicators are correlated to OECD and World Bank indicators on governance, suggesting that the measures are consistent with alternatives.

An example from the energy sector

When applied to the energy sector, the analysis finds that the scores on the four dimensions, as well as their evolution over time, are correlated with sector outcome variables such as prices. For example, improvements in the checks and balances dimension are correlated with lower nominal energy prices for users. Between 2013-2018, the average electricity price decreased in the European Union. Countries that saw improvements in the checks and balances dimension, through reinforced scrutiny of the regulator by the parliament, courts and the public, on average experienced greater price reduction.

Figure 5.19. Reinforced checks and balances are correlated with lower nominal energy prices



Source: (Brousseau, Eric and Gonzalez-Regalado, forthcoming[22]).

Conclusion

Effective governance structures are increasingly relevant in the context of changes in sectors and shocks, which requires strong regulators that are able to adapt while providing stability and predictability. The 2018 OECD Indicators on the Governance of Sector Regulators provide a snapshot of complex and multi-dimensional governance arrangements of economic regulators that allows for direct comparison between sectors and benchmarking between countries, as well as an empirical study of the governance of regulators.

While the constellation of governance arrangements varies between regulators, and the suitability and impact of these arrangements are highly dependent on context, patterns exist. On average, independence and accountability arrangements are closest to good practice in energy and e-communication sectors, and regulators in these sectors have the broadest scope of action. Across sectors and countries, there are common trends among regulators, with a majority set up as independent bodies and with post-employment restrictions in place for the leadership. Regulators tend to contribute to the policy-making process by issuing recommendations or opinions, and consult on their regulatory decisions with stakeholders. Moreover, regulators in most sectors usually only receive guidance from the executive on their long-term strategy, but not on their work programme and day-to-day work and decisions.

However, not all areas show clear trends, and there are still gaps. Regulators differ significantly in terms of their scope of action, funding arrangements and to whom they are directly accountable. There is room for improvement in collecting and reporting information on the quality of the regulatory processes and compliance with legal obligations. Finally, research on exploring the relationship between the governance structures of regulators and sector performance is still in its infancy. Although preliminary results suggest

a positive relationship, further research is needed to robustly capture and unravel possible causal mechanisms between the two.

Notes

[1] The database contains data from regulators in Argentina, Australia, Austria, Belgium, Brazil, Bulgaria, Canada, Chile, Colombia, Costa Rica, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea, Latvia, Lithuania, Luxembourg, Malta, Mexico, Netherlands, New Zealand, Norway, Peru, Poland, Portugal, Romania, Slovak Republic, Slovenia, South Africa, Spain, Sweden, Switzerland, Turkey, the United Kingdom and the United States.

The questionnaire merges the electricity and gas sectors because most countries do not have separate gas and electricity regulators. Two countries with distinct gas sector regulators (Argentina and Brazil) completed two surveys, one for each regulator; the resulting indicator scores were averaged into a single country score for the energy sector.

The figures referring to the United States for the water sector include data from two state regulators – the New York Public Service Commission and the Public Utility Commission of Texas – as the economic regulation of this sector occurs on the state level.

[2] The full list is available in the schemata for the questionnaire in Casullo, Durand and Cavassini (2019[10]).

[3] The Latin American sample partially overlaps with the OECD sample, as Chile, Colombia, Costa Rica and Mexico are OECD member states. While the authors cannot consider the two samples to be independent because of the partial overlap, this box alludes to the OECD average for reference.

[4] Among EU countries, 100% of energy and rail regulators qualifies as an independent body with adjudicatory, rule-making or enforcement powers.

[5] Twenty two out of the 38 OECD countries included in the sample are EU countries, which is a share of 58%. Across the wider sample, the share of EU countries is slightly smaller, with 27 out of 47 countries belonging to the EU (57%).

[6] The share of legally independent regulators in non-EU countries in the sample is 66%, and among non-EU OECD countries in the sample 62%. The share of legally independent regulators among non-EU regulators is particularly low in the air transport sector (only 47% of non-EU air transport regulators in the sample is independent).

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6 Risk-based regulation

Risk-focus and risk-proportionality have been increasingly used by governments and regulators when designing and delivering regulation. Risk helps improve the effectiveness and efficiency of regulation. It is crucial in the perspective of achieving public outcomes at every step of the regulatory policy cycle, while minimising burden and unintended side effects of regulation and rules. The use of risk is however unequally spread across countries and regulatory area. Also, many impediments to its utilisation exist, ranging from resistance in institutions to the over-estimation of the effectiveness of “non-risk-based” regulation. The COVID-19 crisis has shown the obstacles that regulation can pose to response needs when it is not in line with a risk-based approach, nor flexible enough. The chapter discusses how risk prioritisation, objective and data-driven risk assessment, use of new technologies to improve data sharing and analysis, and adequate flexibility/agility can dramatically improve regulatory outcomes.

Key findings

- **Designing and delivering regulation in a risk-focused and risk-proportional** way is an essential approach to improving **efficiency**, strengthening **effectiveness**, and reducing administrative burden.
- **"Risk" is understood as the combination of the likelihood of harm of any kind, and the potential magnitude and severity of this harm**. Risk-based regulation is, crucially, about focusing on *outcomes* rather than *specific rules and process* as the goal of regulation.
- **Adoption of risk-based regulatory approaches is unequally spread across countries and regulatory functions**, and is often limited to phases of the regulatory policy cycle, sectors, etc. This is confirmed by data collected from the pilot questions in the iREG survey.
- **Risk-assessment can serve to prioritise regulatory efforts and tailor the choice and design of regulatory instruments** – within and across regulatory domains. It is not only about understanding the *level* of risk, but the *characteristics* of each risk so as to design the adequate regulatory response.
- **Obstacles to uptake of risk-based regulation** include resistance in institutions with a "risk-averse" culture, public pressure, path dependency, lack of necessary tools and resources etc. A number of these stem from misconceptions about risk-based regulation, as well as an over-estimation of how effective "non-risk-based" regulation actually is.
- **As a first (useful) step, risk prioritisation can be done by sector or by type of activity**, – but when data for risk analysis and prioritisation is available, **a more differentiated, data-driven approach to risk assessment and targeting** is essential.
- **Risk should be assessed in an objective and data-driven way**. Significant advances have been made in recent years including through the use of Machine Learning to improve data analysis, and many jurisdictions and services have introduced new risk-based tools and practices, including in the Covid-19 context.
- Specifically, **the Covid-19 crisis has shown the obstacles that regulation can pose to crisis response when it is *not* proportionate to risk**, or when trade-offs between different risks are not adequately foreseen. It also has shown the importance of allowing and managing regulatory flexibility in emergency situations, and to leverage new technologies.
- **New technologies can facilitate data sharing and improve analysis**, including through the use of a combination of private and public data, but this requires to adequately manage issues of trust and privacy.

Introduction

Risk (and specifically public risk), in addition to its growing use in industry and business, as well as in safety management overall, has over the last couple of decades become increasingly used in a regulatory context (Burgess, 2009[1]). Indeed, in the perspective of trying to improve regulations' ability to achieve their intended outcomes, and of minimising the burden and unintended side-effects they create, risk is a key tool. It allows to better formulate what it is that a given regulation is trying to address (reducing or managing a risk), to better design the contents and mechanisms of the regulation (based on the causes and characteristics of the risks being addressed), to target enforcement and implementation efforts more efficiently (on the areas, sectors, businesses etc. that pose the highest risk). Thus, risk helps to improve the effectiveness and efficiency regulation at every step of the regulatory policy cycle, including *ex post*

assessment (have the risks been effectively managed?) – and also improves accountability, as it allows to formulate in a clear and often measurable way what the regulation or regulator is supposed to achieve (and what are its limits).

In recent years, overall, much progress has been done in extending risk-based regulation to new countries, sectors, regulatory areas etc. – and in applying innovative practices and tools to improve the understanding and assessment of risk (e.g. data integration and Machine Learning), and use it more consistently from the strategic level to the "regulatory frontline". This chapter seeks to reflect such progress, and particularly practices that involve novel applications of digital technologies, and incorporation of behavioural insights.

Over time, "risk and regulation" and "risk-based regulation" have become complementary aspects of an increasingly well-established topic, studied by several important academic and practitioners' networks,[1] referenced in numerous pieces of legislation,[2] covered by major international publications[3] with gradual development over close to 40 years (National Research Council, 1983[2]); (IRGC, 2017[3]) – including previous work by the OECD (OECD, 2010[4]). Still, in spite of risk, risk-focus, risk-proportionality, and risk-management all being referenced in studies and guidance that apply or relate to specific areas of regulation[4] (Khwaja, Awasthi and Loeprick, 2011[5]), there is no consolidated guidance on "risk and regulation" as such at the international level. Risk-proportionality is central to international agreements such as the World Trade Organization's (WTO) *Technical Barriers to Trade Agreement* (TBT), *Sanitary and Phyto-Sanitary Measures Agreement* (SPS) and more recent *Trade Facilitation Agreement*, with relevant clauses[5] requiring applied trade-restricting "measures" to be based on risk, and indicating fundamental elements of such an approach, but interpretation and implementation are far from undisputed (Goldstein and Carruth, 2004[6]); (Wagner, 2016[7]); (Russell Graham and Hodges Christopher, 2019[8]); (Russell Graham and Hodges Christopher, 2019[8]). While addressing this "interpretation gap" goes beyond the scope of this chapter, it is important to acknowledge it, as it helps explain some of the implementation difficulties.

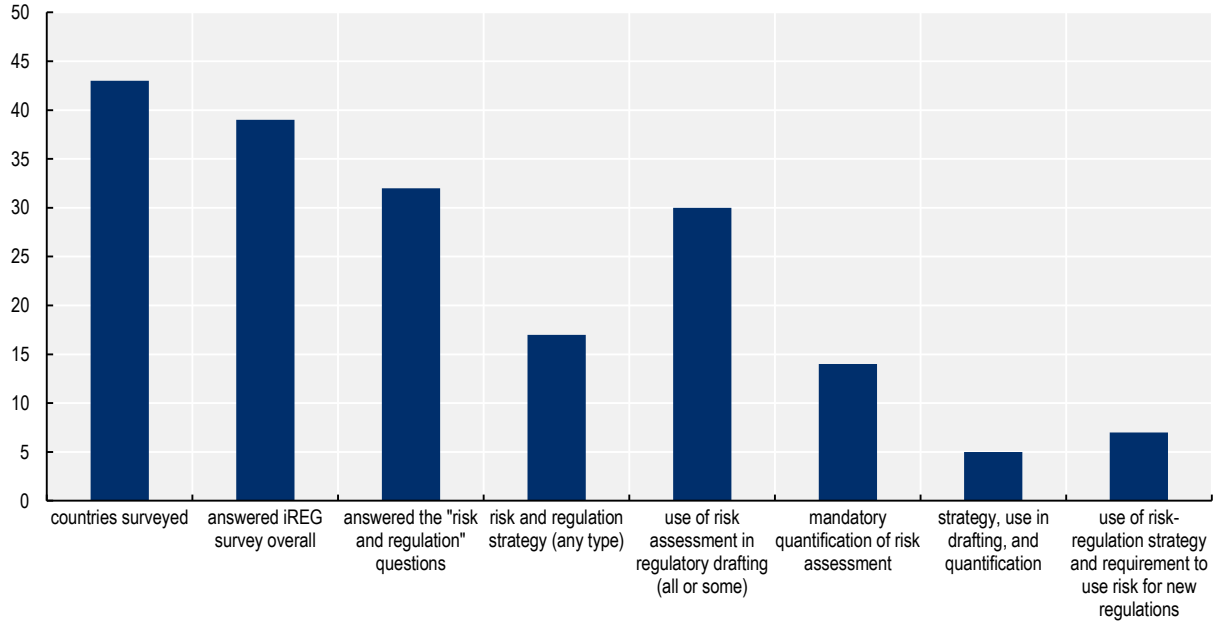
Indeed, notwithstanding the considerable progress over time, the remain a significant *implementation gap* in risk-based regulation – even in some jurisdictions and regulatory areas where apparently binding legislation exists, and/or where official proclamations of being "risk-based" exist. If adequate understanding and assessment of risks, and consistent application of risk-focus and risk-proportionality, are to deliver their expected benefits in regulation, it is essential to more systematically assess the current situation, and spread best practices. The application of "risk assessment, risk management, and risk communication", point 9 of the OECD 2012 *Recommendation on Regulatory Policy and Governance*,[6] is thus being given increased attention in this edition of the *Regulatory Policy Outlook* – with results of a series of pilot questions administered along the iREG survey, and an overview of prominent initiatives in the area of risk-based regulation, as well as preliminary findings from research on the application of risk-based methods in regulatory delivery.

Survey results: risk-based regulation is unevenly and incompletely applied

Data from the pilot questions collected with the iREG survey confirms this general finding of uneven and incomplete diffusion and uptake of risk-based approaches – but also of their slowly taking root in the regulatory landscape. Out of the 39 countries (with the EU being included as a country) surveyed and responding overall to the questionnaire, only 32 provided a response on the new "pilot" risk-based regulation questions, potentially indicating some perplexity and/or lack of awareness or interest about the topic. For some countries, the respondents left some questions unanswered or with a negative reply, even though the OECD team independently had information that some practice existed at the sectoral level, suggesting that knowledge about risk-based approaches is insufficiently shared across the government and even within ministries (since respondents queried other ministries, and some evidently did not reply or replied "no" in spite of risk-based approaches existing within their own ministry).

Moreover, the answers suggest that risk-based regulation is often a perspective that is "confined" to some aspects of regulation and regulatory policy, rather than forming a strong framework for the whole of regulatory functions. Indeed, while relatively few countries responded positively on the question of whether they had "a 'whole-of-government' strategy on "risk and regulation" (9 out of 39 surveyed) or a "sector-specific one" (16 positive answers for sector-specific strategy, and 17 in total having either a 'whole-or-government' or sector-specific strategy, or both), a significantly larger number indicated that risk assessment was "required when developing regulation" (either for all regulatory areas, or for some only – 28 countries in total having such a requirement for at least some regulations). However, only a subset of these (14 countries) required risk assessment to involve quantitative analysis, meaning that the level of rigour required in the assessment remains often relatively light. Overall, only 5 countries responded "yes"at all 3 key "risk" questions, i.e. whether a "whole-of-government" risk-based regulation exists, whether risk-assessment is required when developing regulations, and whether this assessment has to involve quantitative analysis (see Figure 6.1).

Figure 6.1. Use of risk and regulation tools according to iREG survey data



Defining and understanding "risk" in a regulatory context

The term "risk" can be confusing, because of its different meanings (both in different contexts, and even within the same context), but also of the different ways in which it can be assessed. "Risk" is often used interchangeably with "hazard" or with "probability (of harm)". Overall, however, the prevailing consensus when it comes to discussing "public risk" broadly considered, and specifically risk in a regulatory context, is that it is distinct both from "hazard" and from "probability/likelihood". In this usage, "hazard" is used to refer to the existence of possible harm and its potential severity, but does not convey any information on how likely it is that harm will be materialised. On the other hand, "probability" and "likelihood" refer only to how likely it is that something (e.g. a regulatory violation) happens, without consideration to the severity or scope of this adverse event.

The definition of "risk" as the *combination* of the *likelihood* and potential *magnitude and severity* of harm, as used here, reflects also its use in previous OECD work on the issue, and in many relevant international, scholarly, and national documents and legislation (OECD, 2010[4]); (BRDO, 2012[9]); (Blanc, 2013[10]); (OECD, 2015[11]); (IRGC, 2017[3]). While, inside some countries and institutions, use occasionally diverge

(officially or in practice only) from these definitions, consensus is now broad and established for the use of the following definitions in this chapter and elsewhere in this edition of the *Regulatory Policy Outlook* (Rothstein et al., 2017[12]):

- *Risk* is defined as the *combination* of the *likelihood* and potential *magnitude and severity* of harm. This can also be expressed as the combination of the likelihood and degree of hazard. Thus, risk combines a) probability, b) scope of the harm (number of people affected etc.) and c) degree of harm (type of damage).
- *Hazard* is used as the *potential* type, magnitude and severity of harm, but without taking into account the likelihood of harm actually happening.
- *Harm* is any form of *damage* done to people (their life, health, property etc.), the environment (natural and human), or other public interests (e.g. tax fraud harms state revenue). Not all types of harm are of the same nature, and some harm is irreversible (e.g. death), whereas other (e.g. financial) can be corrected once identified.
- *Unpredictability* and *uncertainty are* distinct from risk and from estimations of probability of harm. They are *inherent limitations* in the process of risk assessment and thus likewise limitations of risk-based regulation, that should be acknowledged as such. Approaches on how to handle unpredictability and uncertainty are not always explicitly stated or consistent, which is an issue discussed further in this chapter.

Regulations address a number of different potential harms (bodily, environmental, financial etc.), not all of which are of equal seriousness – in particular, reversibility or its absence creates a key difference. Likewise, regulation addresses many hazards – industrial pollution and explosions, food poisoning, building fires and collapses, marketing fraud, tax evasion etc. Again, not all of these are of the same severity, and the likelihood of each of these actually happening varies greatly. Thus, comparing the level of priority of regulating different, but also different economic sectors or establishments, based on the harm caused, is inherently difficult.

Risk can allow to consider allocation of resources at a strategic level (between different domains such as environmental protection, food safety, state revenue, technical safety etc.), even though this is rarely done – as well as to prioritise regulatory interventions in a given domain, between different economic sectors and establishments, which is a much more frequent practice. In this way, risk can function as a kind of common measurement unit, allowing easy conversion and comparison of the relative "value" of different regulatory interventions in terms of lives saved, environmental impact, economic impact etc. – but this is only possible if a common approach to risk assessment across regulatory domains and sectors exists.

Comparing the relative levels of risk, and deciding on the appropriate type and intensity of regulatory response, requires having gone through *risk assessment* – i.e. estimating the relative level of different risks in terms of combined probability and severity of harm. To allow full comparison across different regulatory domains, not only should there be a unified approach for risk assessment – but also a method to convert different types of harm. While this is theoretically possible (there exist many approaches in law and economics to estimate the economic value of life, health, the environment etc.), it is rarely done in practice with that level of precision. Most often, comparisons of risk levels are done within a given category of harm – e.g. potential losses of life, or potential financial losses. In any case, regardless of the level and scope to which risk is applied, it is an instrument of comparison, and thus prioritisation.

Finally, while risk prioritisation done solely by sector or type of activity can be a useful first step of improvement in situations where risk assessment is starting "from scratch" and with limited or no data to support the exercise, it is not optimal, and insufficient in the longer run. In advanced economies, and where data needed for risk analysis and prioritisation are available to regulatory delivery authorities, a more differentiated approach to risk assessment and targeting can be expected – e.g. so as to be applied to each business entity or object (facility, establishment) individually, based on inherent characteristics and track record.

Why risk matters: the importance of prioritisation, and proportionality

Risk-assessment is thus a useful instrument to prioritise regulatory efforts. While the OECD *2012 Recommendation*, and the entire set of regulatory good practices starting from the use of regulatory impact assessment, all emphasise the importance of cost-benefit analysis and selectivity in regulation, risk provides a key instrument to exercise these and also to assess which regulatory instrument to use, given the specific characteristics of each risk. While risk-based prioritisation looks specifically at focusing resources where the highest risk level is, risk-proportionality considers both the level and the characteristics of the risk to determine the most suitable content for regulations (level of standards, degree of prescriptiveness, etc.) and the choice of regulatory instruments (e.g. *ex ante* permitting, *ex post* controls, certification, registration, etc.). However, some may contend that regulation should not prioritise and rather (following the requests of a number of different stakeholders) try to regulate all potential hazards, regardless of e.g. likelihood or actual prevalence of harm.

Regulating every hazard may be possible on paper (though it leads to massive inflation of the volume of legislation), but allocating resources to control and implement these regulations can only be done within limits set by state budgets and levels of economic activity. Staff numbers and material resources (transport, testing etc.) needed for inspections conducted by state agencies are limited by budget resources, and competing against many other demands. Even when control over regulatory compliance is delegated to third parties (e.g. through requirements for mandatory third-party certification a.k.a. "conformity assessment"), these have a cost. While such controls are not anymore constrained by state budget size, they impose a direct cost to business operators (which, were possible, will seek to recover it from consumers). Thus, such use of third-party controls is also inherently limited – because of the costs it creates to consumers and businesses, and the negative effect it can have on competitiveness and growth.

An excessive number and range of rules means that it ends up being impossible in practice for most economic operators to know about all of them, and to comply with all. An excessively large scope of regulation thus can be setting itself for failure, and in turn harming the rule of law because it is widely accepted that full compliance is impossible (Baldwin, 1990[13]); (Hampton, 2005[14]); (Anderson, 2009[15]). An excessive number of rules and controls means that regulators may be "submerged" by an excessive amount of data – even with the help of modern data analytics tools and increased computing power, over-abundance of information makes effective decision making more difficult (Roetzel, 2018[16]).

Crucially, it has been found through repeated studies that levels of control that are perceived as "excessively high" actually end up decreasing compliance (Kirchler, 2006[17]), in addition to the perceived control burden creating disincentives to investment and growth. Instead of responding to increased controls by higher compliance, businesses and citizens can end up "resisting" when they face very high burden, that they perceive as unfair, thus reducing voluntary compliance. Such effect is predicted by "procedural justice" compliance models (Tyler, 2003[18]), which have also shown that people react negatively to processes where they feel disrespected, where they do not think decisions are being taken in a manner that is understandable and ethical. Excessively broad regulation tends to produce such effects because it is often practically impossible to comply fully with it, and it imposes restrictions in situations where actors do not see any meaningful risk or actual harm. As a result, excessively broad regulation can *increase the overall level of risk* in a jurisdiction because it reduces compliance (Blanc, 2018[19]).

At the outer limit, such an excessively risk-averse regulatory approach can have a negative impact on the aggregate risk level *even* if it manages to achieve compliance, if the negative economic impact is particularly high, while the direct positive safety impact is low. Indeed, as life expectancy is related to income and to overall GDP levels, the negative aggregate impact on life expectancy may exceed whatever gains are achieved through the regulation (Helsloot, 2012[20]). While this corresponds to extreme cases, they are documented and not fictional. More broadly, these findings indicate that risk-based regulation should not be seen as an approach that trades-off safety for economic growth. While, of course, trade-offs in regulation exist and should be properly acknowledged, for a given chosen level of protection and

regulation, risk-based design and enforcement of regulation will, based on available research, achieve better outcomes both in terms of safety and in economic and social terms (Coglianese, 2012[21]).

Taking stock: unequal and often limited implementation

While there are many pieces of legislation that mandate a risk-based approach, and a number of institutions that claim to be using one, the level to which risk-based regulation is effectively implemented is not easy to assess – be it in breadth (across jurisdictions and regulatory functions) or in depth (in terms of how consistent and rigorous the approach is). While some elements of good regulatory practices are, to an extent, directly observable relatively easily (e.g. the existence and level of uptake of a consultation mechanism), it typically requires more expert investigation to assess the degree to which risk is actually and rigorously taken into account in regulatory policy. Looking into the application of risk at the regulatory delivery stage is even more painstaking, for high-level statements of delivery institutions do not necessarily match practices "on the ground", and the number and variety of institutions involved is considerable. Still, in this edition of the *Regulatory Policy Outlook*, we attempt a first, preliminary and tentative stock-taking of the current uptake of risk-based regulation, both at the regulatory design and delivery stages.

To this aim, the OECD Secretariat developed pilot questions on "risk and regulation" that were sent to participating countries along with the iREG survey that forms the core basis of this *Outlook*. While limited in details, and not reflecting an in-depth assessment, they provide a first glimpse of the degree to which different countries acknowledge the importance of risk in the regulatory process, and effectively follow-up at least for some areas of regulation. The survey questions also look into the application of risk assessment and management in the COVID-19 context. In this initial pilot, the survey looks primarily at the breadth of application of risk-based approaches, i.e. at whether they exist and are applied in a given country and, if so, across all of government or only in some sector(s). Looking at the depth of implementation would require additional research work, and the chapter will only provide some snapshots of specific cases.

In addition, to provide an initial view of the "delivery" stage, the Secretariat gathered data on regulatory inspections and enforcement staffing resources in as many OECD member countries as possible, focusing on selected regulatory functions that are particularly prominent in terms both of public perceptions and of actual share resources. These provide a first indication, not only of the importance of the issue including in terms of public expenditure, but of the degree to which regulatory delivery systems differ in the relative weight given to different risks (ratios of resources between different functions vary from country to country), and in the overall importance they give to regulatory enforcement (ratios of enforcement resources to population, businesses, etc.). Again, this is by no means an in-depth research of the variety of regulatory delivery practices in regard to risk, but reflects the broad situation at the strategic level (resource allocation).

Risk and regulation implementation: challenges in data collection, large variations in approaches

As reported in the opening section of this chapter, responses to the iREG survey provide a first glimpse of the uptake of risk-based regulatory approaches, and overall show that less than half of the surveyed countries report having any form of risk and regulatory strategy, while around ¾ of them use risk assessment in some way during regulatory drafting, but only around 1/3 have a requirement to *quantify* risk in such a process. Such high-level survey data is limited to formal rules and processes, and does not allow to assess implementation of risk-based approaches.

Properly assessing whether risk-based approaches are reflected at different levels and steps of regulatory delivery requires an in-depth investigation of each institution or service, and of the applicable regime for approvals and licensing, inspections and enforcement, etc. While the OECD's *Toolkit for Regulatory*

Inspections and Enforcement (OECD, 2018[22]) provides a framework for conducting such work, it would require considerable resources to systematically conduct in each country included in this *Outlook*, even were we to research only selected regulatory areas. Instead, in this section we briefly report the preliminary results from an analysis of available data on regulatory inspections and enforcement resources. Indeed, such work has the first benefit to highlight the importance of the regulatory enforcement function in terms of public administration staff (and thus of budgetary resources). In addition, it allows to compare both between regulatory areas (how different risks are "weighted" against each other at the strategic level of resource allocation), and between countries (how much "intensity" of regulatory enforcement is deemed adequate to deal with a given set of risks).

In spite of data on employment in public administrations being generally public, many countries, institutions or services do not keep specific track of inspectors or staff with inspection powers and functions, or do not have consolidated information on all the institutions involved in a given regulatory field. This is made particularly complex because, in a number of countries, general and/or specialised police and law enforcement bodies also have inspection powers and mandates, though only a part of their staff is actively involved in such activities. Obtaining precise data on this point is sometimes impossible, and doing estimates is not always possible. The complexity of regulatory delivery systems where national/federal, state/regional, local/municipal services all can be simultaneously active in a given field makes the task even more challenging. So does the fact that a given regulatory area can be covered by several services, but also that one given service or institution can be, in some countries, active across more than one regulatory field – in which case estimates of resource allocation between these different mandates is not always available.

The preliminary results of this work (see Table 6.1) show several important points. First, the resources at stake are often considerable, representing quite a significant share of overall state employment and resources, and deserve more systematic attention than has often been the case. Second, the allocation of resources can differ sharply between different regulatory fields, without clarity on whether this reflects a proportional difference in the supervision workload or in the underlying risks. Third, there are sharp variations in "intensity" of supervision in terms of number of inspectors by inhabitant, worker, or enterprise, even between neighbouring and otherwise comparable data. This all shows the importance not only of continuing such research and covering more countries and regulatory fields, as well as obtaining more detailed data, but also for countries to conduct such exercises periodically and systematically to review whether the institutional framework and resources are still fit-for-purpose.

For these reasons, the study has so far been unable to present full data for all OECD members, and even when data is available in some areas, it is not always present for all. To make the research more realistic in scope, the focus has been on food safety, occupational safety and health (OSH), and environmental protection. If we set aside revenue agencies (which have been largely covered through research and OECD literature), these are typically the most important regulatory fields from a "delivery" perspective, be it in terms of number of controls conducted, enterprises regulated, staffing, financial resources – or public perceptions (Blanc, 2012[23]).

As seen below, the allocation of resources can differ sharply between different regulatory fields, without clarity on whether this reflects a proportional difference in the supervision workload or in the underlying risks (e.g. there are from 2.5 to over 20 times more food safety than environmental inspectors, depending on the country). In addition, there are sharp variations in "intensity" of supervision in terms of number of inspectors by inhabitant, worker, or enterprise, even between neighbouring and otherwise comparable countries (Austria has significantly more than Germany, Italy has way more than Germany and France, etc.). This all shows the importance not only of continuing such research and covering more countries and regulatory fields, as well as obtaining more detailed data, but also for countries to conduct such exercises periodically and systematically to review whether the institutional framework and resources are still fit-for-purpose.

Table 6.1. Comparison of inspection staff resources in selected countries and regulatory fields

Country	Food Safety	OSH	Env't	Total	Total population	Total businesses	Businesses w 10 or more employees	Inspectors / 100 000 population	Inspectors / 10 000 businesses	Inspectors / 10 000 businesses w >10 empl.
Austria	2 648	311	120	3 079	8 901 064	410 934	41 940	34.6	74.9	734.1
Finland	810	320	753	1 883	5 525 292	302 901	21 206	34.1	62.2	888.0
France	10 598	2 566	1 890	15 054	67 098 824	3 981 673	160 638	22.4	37.8	937.1
Germany	10 338	5 218	4 374	20 063	83 166 711	2 801 787	361 943	24.0	71.1	550.6
Greece	1 581	629	104	2 314	10 709 739	770 002	29 741	21.6	30.1	778.1
Italy	13 446	6 691	1 002	21 139	60 244 639	3 834 079	176 038	35.1	55.1	1 200.8
Lithuania	720	231	38	989	2 974 090	212 893	13 831	33.3	46.5	715.1

This situation, combined with other research on specific countries, regulatory areas, etc., suggests that path dependency is important, and that there is a lack of regular, systematic reconsideration of the risks addressed by regulatory delivery structures and resources (Blanc, 2012[23]); (Blanc, 2018[19]). This has contributed to extremely complex, convoluted institutional landscapes (as directly observed when collecting the data, the difficulty of which came precisely from the vast number of institutions with overlapping or mixed functions, frequent unavailability of precise numbers on inspecting staff, etc.), and made resource allocation and expenditure very difficult to track and assess, and mostly unrelated to risk analysis or assessment. From this perspective, the path towards truly risk-based, risk-focused, and risk-proportional regulatory delivery is still a very long one. Nonetheless, important progress has been made, and major initiatives taken in recent years to improve the situation, which are detailed in the following section of this chapter.

Towards risk-based regulation: overcoming obstacles

There are many reasons why the uptake of risk-based regulation principles in policy making and regulatory delivery is far from universal, and implementation often incomplete. This is due to a variety of factors, including resource and capacity constraints (changing regulatory approaches requires expertise and skills), but also public perceptions, and legal systems (Rothstein, Borraz and Huber, 2012[24]); (Rothstein et al., 2017[12]). Public perceptions (both those of the "general public", of the media, and of decision-makers in the political and economic spheres) can create considerable difficulties for risk-based approaches – both in terms of accepting the idea of "less-than-complete" protection from harms, of assessing and weighing risks, and of accepting proportionality in risk-response. This has been covered extensively in important publications, including on the risk of "knee-jerk" responses to major accidents or emerging hazards (Blanc, 2015[25]); (Balleisen et al., 2017[26]), the psychological determinants of the risk response (Tversky and Kahneman, 1974[27]); (Weyman, 2016[28]); (Burgess, 2019[29]), the variations in risk perception between experts and general population (Fischhoff, Slovic and Lichtenstein, 1982[30]); (Slovic, 1986[31]); (Flynn, Slovic and Mertz, 1993[32]), and the possibility to engage the public to try and make risk perceptions and response more "nuanced" (Helsloot and Groenendaal, 2017[33]).

While engaging with public perceptions and opinion requires a complex and longer-term approach, there are shorter-term issues that governments can try and address to "unlock" the potential benefits of risk-based regulation. In particular, there are useful examples of how governments can work to overcome doubts and resistance from regulatory institutions to risk-based approaches (Box 6.1). Indeed, many institutions may be reluctant to adopt these or even downright hostile, because of a variety of issues: cultural resistance in institutions with a strong "risk-averse" or "safety at any cost" culture, public pressure (or fear of public pressure) making regulators wary of being seen as at risk of "regulatory capture" or "softness", path dependency and scepticism towards change (sometimes driven by past, disappointing

experience), lack of tools and resources. Simply "legislating from above" to promote risk-based regulation, while important, does not usually succeed in achieving practical change if such engagement work with regulators is not done effectively.

Box 6.1. Overcoming "passive resistance" to risk-based inspections: political support and capacity building as crucial drivers

Political support

International experience shows that policy makers' commitment and support is essential to adopt the legal and institutional changes needed to introduce risk-based regulations. A paramount example is the first phase of the inspections reform in Lithuania (2008-2012), where the Prime Minister at the time, as well as the Ministries of Economy and Justice, provided strong political support. Similar examples on the need to have champions with strong political clout in public administration can be found during the regulatory reform process in Mexico (Comisión Nacional de Reforma Regulatoria, CONAMER, and Agencia de Seguridad, Energía y Ambiente, ASEA) and in Bogotá (Inspección Vigilancia y Control, IVC system), or in the Netherlands with regard to the preparation and adoption of an Internal regulation on the position of inspectorates.

Capacity-building

Experience demonstrates that training enables understanding and adherence to risk-based enforcement systems into inspections' models with positive outcomes for regulatory delivery. When inspectors adopt a risk-based approach and start providing advice to businesses, the number of non-conformities and incidents decreases. Well-educated and well-trained inspectors are capable of providing useful advice to businesses and ultimately promote compliance and risk-management. Training in, and improvement of, the inspectors' social competencies is considered as an essential dimension of reform experiences in Australia, Bogotá, the Netherlands and the United Kingdom.

In Bogotá, **Colombia**, an initiative to promote world-class practices on inspections was launched between 2016 and 2019 in order to boost public confidence in the government. The initiative comprises in particular risk-based inspections planning, the establishment of an IT platform and a capacity-building programme on the following topics: risk-based methods, decent treatment of entrepreneurs, service to citizens, resolution of conflicts, transparency, rights and duties of inspected subjects and technical processes during the conduct of inspection activities.

In the **Netherlands**, the set-up of the Academy for Supervision aims at introducing a generic training programme for inspectors to strengthen the harmonisation of inspection practices. Risk-based enforcement lays at the core of the training. The philosophy of the approach is to concentrate on understanding of risks and on how to respond to, and handle them.

Source: (World Bank Group, 2021[34]).

In the **United Kingdom** the 2008 and 2014 Regulators Codes provided the legal basis for the so-called "Primary Authority" scheme (see Box 6.8), which enables businesses to receive advice from inspectorates on how to meet regulation through a single contact authority. The whole approach underlying Primary Authority relies on a high level of professionalism of inspectors, and in particular on them having fully internalised (and being fully proficient) in risk assessment and management. It also requires inspectors to know how to work with businesses in a co-operative way, how to explain and convince – but also how to investigate and spot hidden problems. The foundation of this approach is that inspectors (regulators) need a set of "core skills" (related to risk-based regulation and regulatory delivery) in addition to specific technical skills depending on their domain of activity. These core skills

are organised in several groups, including "risk assessment", "understanding those you regulate", "planning activities", "checking compliance", "supporting compliance", "responding to non-compliance" and "evaluation".

Source: OECD Secretariat interviews and research.

Beyond working on perceptions and culture change through engagement with regulators, it is also often indispensable to establish legal foundations for risk-based regulation through enabling legislation. In some cases, existing legislation and constitutional principles may make risk-based approaches difficult or impossible to apply without specifically authorising clauses in law (Rothstein, Borraz and Huber, 2012[24]); (OECD, 2015[11]); (Rothstein et al., 2017[12]). In others, such "horizontal" legislation is used not so much to make risk-proportionality possible as to push it further, introducing directly applicable provisions or mandating regulators to introduce e.g. risk-based targeting or risk-proportional enforcement, etc. Box 6.2 presents some diverse examples of "enabling" legislation for risk-based regulation.

Box 6.2. The risk-based approach in national legislation

Lithuania: Law on Administrative Procedures 2012

An inspection reform towards a risk-based approach was implemented in Lithuania since 2008, which involved changes to adopt strong and legally binding instruments to inspections' practices. The amendments to the framework law included a risk-based approach to inspections, the means to make it possible, and a balance between inspectors and inspected subjects, by foreseeing their respective rights and duties.

Three key documents were adopted: i) Amendments to the Law on Public administration; ii) Governmental Decree 511 on the inspection reform; iii) Guidelines on various tools of the reform (on development of guidance tools, of performance indicators for inspectorates, etc.). The legal foundations for the reform were set first by a Government Resolution of May 2010 (subsequently amended and strengthened in 2011 and 2012), and by the adoption of a set of amendments to the Law on Public Administration at the end of 2010 – in particular the introduction a new chapter on "Supervision of Activities of Economic Entities". The provisions of the chapter on supervision are considered as best practice, as they apply to all regulatory areas and emphasise provision of guidance and of assured advice to regulated subjects. One of the innovations of the law is the concept of "supervision", which comprises provision of consultations, inspection visits, analysis of available information (for risk assessment etc.), and enforcement measures. The amended Law on Public Administration provides for risk assessment and risk focus as foundations for inspections. In addition, the law includes guiding principles such as strict proportionality of inspection and enforcement measures, neutrality and transparency, inspectorates' obligation to provide advice and assistance to inspected subjects, among others.

Source: (World Bank Group, 2021[34]).

Mexico: National Commission of Regulatory Improvement (*Comisión Nacional de Mejora Regulatoria*, CONAMER)

Following a constitutional reform establishing that authorities at all levels of government must implement regulatory improvement policies to promote the simplification of formalities, regulations, procedures, and services, among others, the General Law on Regulatory Improvement enabled the transformation of the Mexican Federal Commission on Regulatory Improvement (COFEMER, for its acronym in

Spanish) into the National Commission on Regulatory Improvement (CONAMER) as the Regulatory Improvement Authority in 2018. CONAMER's main mandate is to promote transparency in the process of issuing and implementing regulations, with the ultimate goal of ensuring that regulations create benefits for society that outweigh their costs (OECD, 2018[35]).

In 2019, through the "AC-004-08/2019 Agreement" CONAMER approved an updated regulatory policy for the following years. Regarding inspections, the Agreement foresees that new mechanisms should be implemented to enhance greater co-operation between citizens and authorities. Likewise, it was stated that new tools should be introduced enhance the rationalisation and legality of inspections by means of rigorous risk-based regulatory methodologies, the implementation of better regulation principles and the strengthening of public trust (Source: *Acuerdo CONAMER 004-08/2019*).

In January 2020, a "New Law for the Promotion of Citizen Trust" was approved to introduce the bases for the development of a risk-based inspection system. According to the law, CONAMER must assure that risk-based planning methods are developed so as to determine the purpose and frequency of inspections based on risk analysis. The law specifically foresees that risk analysis must consider both intrinsic risks and the business 'trajectory'. CONAMER is working on the development of an information system to support the implementation of the risk-based approach (OECD, 2020[36]).

Slovenia: Inspection Act 2014

In 2002 Slovenia adopted two framework laws, the Civil Servants Act (CSA) and the Inspection Act (IA), accompanied by specific laws regulating each regulatory delivery area. The IA provided common rules to be applied by all inspection bodies and specific principles of the new approach to inspections – in particular proportionality (selecting the measures to be applied against the objectives being pursued), preventive approach, transparency (informing in a timely fashion the public on findings and measures applied during inspections), the possibility to conduct extraordinary inspections to businesses when needed based on risk, and efficiency of inspections. In 2014 a number of amendments to the IA were adopted to enable a more rational (evidence-based, risk-based etc.) inspection system. Based on IA and on the principles introduced through it, specific inspection acts were further adopted to regulate different inspection areas. The Inspection Act provides now for additional/complementary elements needed to strengthen the foundation for a risk-based approach to regulatory delivery: risk identification, efficiency of inspection bodies, risk-based inspection planning, among others.

Source: (World Bank Group, 2021[34])

United Kingdom: 2014 Regulators Code

In Great Britain, the 2014 Regulators Code (which replaced the 2008 Regulators Compliance Code) sets a number of key principles for regulators to follow, including risk-focus and risk-proportionality, the emphasis on providing guidance and advice to promote compliance, the need to always consider the social and economic effects of regulatory decisions and to look for the enforcement decision that will help businesses grow. Among other elements, the 2014 Code (and the 2008 Code before this) also provides the legal basis for the "Primary Authority" scheme, which enables businesses to receive advice from inspectorates on how to meet regulation through a single contact authority (see Box 6.8). The scheme is based on a risk-based approach that allows inspectorates to promote regulatory compliance. The code also included the common inspiration for the way such Authority scheme works and empowers the Office for Product Safety and Standards to manage it.

Source: OECD Secretariat desk research.

Highlights: major initiatives and innovations in risk-based regulation

The uneven and less-than-fully-consistent spread and application of risk-based regulation does not mean, far from it, that there has not been significant progress in recent years, or that there are no worthwhile innovations to report on. In fact, there are many important initiatives that can provide very useful examples of how to apply risk-based approaches concretely and effectively, how to facilitate their use, and how to apply them in innovative ways. Moreover, there also has been a consolidation in knowledge, with increased sharing of experiences, an increased number of good-practice examples, and further development of international guidance (in particular (OECD, 2018[22])). Significant advances in computing power (and decrease in computing costs) have also made the application of risk-based analysis and planning far easier, compared e.g. to a decade ago.

In this section, we thus look successively at improvements in the use of data for risk-based regulation and specifically regulatory delivery, at the use of risk as a guiding principle to make regulation more outcomes-focused, and at the application of risk in the COVID-19 context (including the actual and potential application of digital technologies e.g. for remote surveillance and inspections).

Implementing risk-based regulation through better use of data

The very foundation of risk-based regulation is the reliance on data, because risk should be assessed in an objective, data-driven way, as much as possible. In past years, availability of data has often been issue for more systematic and thorough risk analysis, in particular when it came to applying risk-based planning to regulatory inspections. Indeed, detailed data on entities and establishments under supervision was often not available, or not digitised, or not updated, etc. Different services held parts of the relevant data, and were not communicating. Findings from inspection records were frequently impossible to analyse systematically to update risk assessment methods because they were paper- or text-based, or insufficiently detailed, etc. Digital government developments, progress in computing power and methods, spread of technology and skills, evolution of systems in public administration etc. have led to a situation where these constraints are much reduced, and both “already known” good practices can be taken up more widely, and new, innovative practices can be implemented successfully.

Earlier reviews of international practice had already allowed to define objectives for information systems to enable risk-based inspections and enforcement (OECD, 2014[37]), and to establish desirable key elements for inspections information management systems, as well as essential implementation requirements etc. (Wille, 2013[38]); (OECD, 2015[11]); (Mangalam, 2020[39]) . Ideally, such systems should provide updated data needed for risk assessment and planning on facilities, businesses and activities, and allow targeting and prioritising the selection of businesses subject to inspection in line with their risk level. They should enable recording of inspection results in a way that makes further analysis and follow-up easy and automatable. They should also either rely on a single data repository for multiple services, or enable and facilitate data exchanges between them, and offer support for reporting, performance monitoring, etc.

Recently, several jurisdictions have introduced or further developed information systems which address all or several of these requirements, in ways that correspond to the applicable context and constraints. A selection of such systems is presented in Box 6.3.

Box 6.3. Information systems for inspections

United Kingdom: “Find it”

The Health and Safety Executive (HSE) is a regulatory delivery agency which conducts inspections and promote inspections with a risk-based approach and methodology (see Box 6.7). In order to improve

its regulatory targeting capability, so as to secure the greatest impact on reducing work-related risk, HSE developed a web application called Find-It, which enables authorities to make better use of data, demonstrate accountability, deploy resources optimally and improve their overall efficiency (Source: Find-It flyer, HSE). Inspectors no longer have to self-select sites – i.e. spending time looking at lots of different data from various sources to identify high-risk premises which they will inspect. A variety of algorithms match: GIS information about the site location, the numerous names used by a business, regulatory and administrative data about a business kept in various databases within and across organisations. The risk for facilities is calculated, whenever needed, based on indicators, such as past enforcement measures, time since last inspection, accident records, etc. Decision-making on targeting is partly centralised by HSE intelligence officers. One such officer provides directions to around 350 inspectors to choose the best options for actions in areas and with facilities posing the highest risk. It also enables choosing when to combine HSE inspections with those of other inspectorates.

Source: (World Bank Group, 2021[34]).

Italy: information systems for regional inspection services

At the core of Campania Region's reform on food safety inspections lays a risk-based IT System called GISA (*Gestione Integrata Servizi e Attività*, see http://www.gisacampania.it/). Currently, it supports risk assessment of businesses and locations/facilities for the purposes of inspection planning. It automatically calculates risk levels based on risk models using the results of controls and checklists. Risk levels are periodically reviewed depending on the type of activity and "surveillance" inspections. 'Surveillance' means a technical method of examination that focuses of the structural, managerial, and contextual aspects in order to assign a risk level to the business and facility/location. Non-compliances found in inspection visits are also recorded into the System, and used as an additional indicator in "surveillance" inspections when determining risk levels. GISA is used not only by the food safety and veterinary services of the region, but also by the *Carabinieri* units in charge of sanitary surveillance, providing a first step at data integration. The system is "free to reuse" for all Italian public institutions, and its adoption is considered both by other regions for food safety inspections (Valle d'Aosta and Liguria), but also by both national and regional services for environmental protection.

In the Autonomous Province of Trento, a unified platform to register and plan inspections has been developed over the past 3 years, called the RUCP (*Registro Unico Controlli Provinciali*, Unified Registry of Provincial Controls). Right now, the RUCP is operational for a couple of services only, but provides early support for "mobile inspections" (pre-defined check-lists used on tablets). At its core is a single database where, eventually, the results of all inspections will be accessible to all services, at least in aggregated form, and help them avoid duplication and increase their "intelligence" on establishments, thus updating and refining their risk analysis. In addition, a module is under development to support risk-based analysis and rating of establishments, and support risk-based planning, which will start being operational in 2021.

Source:; (OECD, 2021, forthcoming[40]).

Netherlands: creating an interface and interconnection between all inspection systems

Inspection View, initiated in 2013 and developed for different sectors, designates a virtual platform in which inspectors can consult information on inspection objects. Such information is available in data systems of other inspectorates they use to conduct inspections and record inspection outcomes, and Inspection View is an integration platform which enable data exchange and horizontal co-ordination between the inspectorates. The leading idea behind the solution is that inspection and enforcement should be carried out from the perspective by government as a whole, and not by individual inspectorates. Inspection View enables national, regional and local inspectors to consult each other's

data on inspection objects, being now used by over 500 inspectors. It is developed as a government-owned platform, with outsourced maintenance and support.

The external information systems are used to support conducting risk assessment, inspection scheduling and collecting inspection outcomes. Than the information from all external sources is presented to the user of Inspection View in an integrated file. Since no data is duplicated, the user always gets the most recent set of data. With Inspection View inspection results can be analyzed for a particular object, or can be exported as a bulk data to be analyzed using some external software (e.g. Excel). Two versions of Inspection View are being developed: a generic version, accessible to all inspectors, and specific versions for inspectors in co-operative networks, with access only for participants in those networks. Until today, three versions of Inspection View have been developed: Companies, Environment and Inland Shipping Inspection View. The Inland Shipping Inspection View has proven to be very successful, as all inspection authorities participate in the System.

Source: World Bank Group (forthcoming 2021), Publication on Integrated Inspections Reforms; https://www.ilent.nl/onderwerpen/toegang-tot-inspectieview/documenten/publicaties/2019/1/31/gebruikershandleiding-inspectieview.https://www.ilent.nl/onderwerpen/toegang-tot-inspectieview/documenten/publicaties/2019/1/31/gebruikershandleiding-inspectieview.

Slovak Republic: The Financial Reliability Index

The Slovak Financial Administration was created in 2012 through the merger of the former Tax Administration and Customs Administration. In 2018, the Administration has started to use a new "Financial Reliability Index" to support risk assessment. The conditions for the functioning of the Index were created in 2018 through an amendment to Act No. 563/2009 Coll. on tax administration. The risk assessment of supervised entities is based on an internal automatic analytical tool. It allows to identify "reliable" tax entities for which the periodicity of tax controls is reduced, and improve targeting of excise tax controls.

Source: research by the OECD Secretariat.

Another way, in which data management and use can be considerably improved by technology, and lead to improved regulation of risk, is the *analysis* of existing data. While revenue agencies had long started to systematically use data analysis techniques to identify risk indicators and their relative importance, this had until recently been difficult to replicate for non-revenue inspections (Khwaja, Awasthi and Loeprick, 2011[5]). Data was insufficiently digitalised, too complex, or on the contrary too narrow – or historical records were insufficiently long, as new systems had been introduced too recently. In some cases, data systems with historical inspection records existed earlier, but their scope was narrow. Specific staff competences and capacity were also often missing. The rising understanding of risk-based regulation and of the importance of accurate risk-assessment (as opposed to relying on "traditional" assessments of where priorities lay) have opened the way for a more systematic, data-driven approach. In spite of remaining challenges in terms of assessing the "severity" dimension of risk, recent Machine Learning applications are very promising in terms of significantly improving the understanding of which characteristics of businesses and establishments are the best predictors of risk, and thus considerably improve the effectiveness of risk-based targeting (see Box 6.4).

Box 6.4. Machine learning and risk indicators

While defining risk abstractly is relatively straightforward, developing robust methods to predict the level of risk of different businesses or establishments is far more difficult. Until recently, challenges in data

availability and methods for analysis meant that defining risk criteria and their relative weights based on "data mining" or similar mathematical approaches was mostly reserved to tax and customs inspections (where the objects of regulation and control are inherently numerical, and computerisation was done earliest and in the most systematic way) – in technical, safety and similar fields, risk identification and weighting was done through a combination of scientific and technical findings, regulators' experience and "trial-and-error", but in a much less systematic and precise way.

The spread of information management systems to record inspection results, and thus the increasing availability of detailed historical data, combined with advances in data processing power and analytical tools (e.g. machine learning) now make it increasingly possible. In Italy, the regions of Trento, Lombardy and Campania are currently piloting the use of Machine Learning for risk assessment. Based on historical data analysis, the system can identify which characteristics are the best predictors of risks, which helps make risk-based planning of inspections far more precise and reliable. In Lombardy, the work focuses on occupational safety and health, in Trento the analyses covers labour law inspections, and in Campania food safety controls.

In addition to such work to better assess "operational-level" risk, work at the "strategic level" is also increasingly data-driven. In 2017, Canada's CFIA launched a review of its risk management model in order to ensure the allocation of resources where it can have the greatest impact on reducing risks. The first challenge of the model is to enable comparison among different kinds of risks, which entails converting different types of risks into comparable data. Based on this, the Agency is able to consider trade-offs among all of them, across different organisational levels This work has entailed considerable efforts to gather and consolidate data from all parts of CFIA's work.

Along similar lines, the Risk Assessment Directorate of Environment and Climate Change Canada has developed the Threat-Risk Assessment (TRA) model, based on a large review of available data to estimate the probabilities and potential impact of known sources of harms for the environment. Data is gathered from the industry, government partners and, international actors. Outcomes from the strategic risk assessment are used by the Climate Change and Environment of Canada for project planning and allocation of resources. Likewise, it is shared with enforcement officers to inform their work.

Notes: on the experience in tax inspections targeting see (Khwaja, Awasthi and Loeprick, 2011[5]) (OECD, 2004[41]) (OECD, 2009[42])
Source: (OECD, 2021, forthcoming[40]), direct interviews with and presentations from CFIA and Environment and Climate Change Canada.

Beyond the definition of risk indicators and risk assessment algorithms, up-to-date and reasonably comprehensive data on supervised entities is essential to ensure that targeting of regulatory control measures (inspections and enforcement) is really based on risks, and that regulators can react in a timely and effective way when new risks appear or accidents occur. To this aim, it is essential that regulatory agencies have adequate data management tools, and that they share data with each other as much as possible. Data sharing between regulators and other entities (non-regulatory, such as e.g. health-care providers or private certifiers) is likewise important to improve the effectiveness and efficiency of the entire regulatory system. In a number of countries, such improvements in data-sharing are made difficult by privacy regulations, or by the way in which they are interpreted and enforced. Given the importance of the issue in terms both of efficiency and effectiveness, it appears crucial to promote further research and experience sharing on good practices that allow to effectively protect individual privacy, but allow essential information to be shared by regulatory services, particularly about economic entities (and not relating to private persons). Furthermore, much of the information, which is important to improve risk analysis and assessment and *might* have privacy implications (like, say, health care or accidents data) can be anonymised fully before any analysis, as what matters for studying risk in that case are not the individual cases but the patterns.

New technologies make such data sharing and effective analysis increasingly easy, and some initiatives can be used as particularly valuable examples (see Box 6.5). These can include the use of a centralised database and common system by a number of regulators and possibly by health-care providers too, or tools to exchange information in an automated way between different systems. Sharing information between different regulatory agencies allows them to ensure that data on supervised entities is as up-to-date and comprehensive as possible, and also to avoid duplication of control activities. Information sharing with the healthcare system allows regulatory agencies to better assess the emergence of new risks and evolution of known ones, and thus target their interventions better, both in terms of which establishments they visit, and which industries, products, etc. they focus on. For instance, systematic reporting from health care institutions on accidents due to failures in product safety, or food-borne contaminations, can greatly improve the ability of regulatory agencies to target their activities (and does not need to convey any personal, sensitive data – as what matters for risk assessment are patterns of cases, not individual specifics).

In addition, data sharing agreements e.g. with private certifiers active in areas of interest to regulators (for instance food safety) can likewise allow to have more comprehensive and updated information on sectors with vast numbers of operators (like food). Finally, the use of "non-traditional" data sources such as social media or reviews from e-commerce sites can help assess food safety or product safety risks. Using such sources requires automation to handle vast amounts of data (machine learning), but can be both effective and cost-efficient,[7] and provides information that is broader and more timely than regulatory bodies themselves can obtain through traditional methods such as inspections.

Box 6.5. Sharing and using data to better manage risks

A number of Italian regions and institutions have, in recent years, worked on improving data sharing, analysis, and usage, to reduce the burdens and inefficiencies created by duplications and lack of co-ordination between different services, and better support regional economies.

In Lombardy, the Mo.Ri.Ca system for risk monitoring in construction sites uses data emerging from notifications, surveillance and accidents (collected via Impres@BI) and estimates the risk level of a given site on this basis. Risk criteria and weights, previously defined empirically, are now being improved through Machine Learning (cf. Box 6.4). The key strength of the system is that it integrates data from a number of sources, including notifications from the health care system, and considerably improves risk management at a very limited cost.

In Campania, in addition to the existing GISA system to plan and manage all food safety inspections, the region partnered with the University of Naples Parthenope to develop MytiluSE, a system to predict the quality of waters so as to secure safety of mussels produced in the bay of Naples. Rather than expending large resources on *ex post* controls to find potential contamination, the system works pre-emptively, enabling to know which days the harvesting of mussels would be unsafe. Once fully operational, it can both inform producers and guide inspectors' work. Developing the system involved investigating the currents of the bay of Naples, mapping contamination sources, and developing a reliable predictive model, but it is potentially completely transformative for regulatory delivery. It was also adapted to predict air pollution by fumes, which can affect feed for bovine herds. The predictive approach for mussels is not only better for the economy and public service efficiency, but it also avoids health hazards far more effectively, because microbiological testing and sampling takes time, and results can come too late (leading to potential contaminations from other products harvested the same day).

Source: Montella R, Riccio A, di Luccio D, Mellone G, de Vita, C G (2020), MytiluSE: Modelling mytilus farming System with Enhanced web technologies, Università degli Studi di Napoli Parthenope, Sciences and Technology Dipartiment, commissioned by Campania Region, Unità Operativa Dirigenziale Prevenzione e Sanità Pubblica Veterinaria (presentation) – for other cases: (OECD, 2021, forthcoming[40]).

Outcomes-focused instead of process-focused regulation

Although increasing work is being carried out in institutions, processes and methods that aim to administer, control, and implement regulations so as to better realise risk-based approaches, differences in regulatory delivery styles between one country and another, but also between regulatory delivery agencies within the same country, are still considerable[8] (Blanc, 2012[23]); (Hadjigeorgiou et al., 2013[43]); (OECD, 2015[11]). The way their goals are devised – some stressing control of legal compliance and punishment of non-compliance, whereas others focus on risk mitigation or improvement of public welfare – are among the most ubiquitous differences. The latter aim at meeting public outcomes rather than processes and/or formal conformity. Outcome-focused regulation is another aspect of risk-based regulation – because risk is the indicator through which outcomes can be defined and measured, and thus the criterion used to prioritise actions and take decisions, rather than focusing on rigid processes.

While the use of outcome-oriented approaches has gained a growing profile, work is still needed to change what still seems to be the prevailing perception that these approaches are an alternative to traditional command and control schemes, rather than something that should be used in delivering regulations. This is an overly restrictive perspective of what outcome-focused approaches, and regulatory delivery, are about. In fact, approaches, methods, and tools focused on achieving regulatory outcomes are at the core of efforts to make regulatory delivery more effective, and efficient.

In practice focusing on outcomes entails an actual paradigm shift from a traditional conception of regulatory enforcement based on finding and punishing violations towards a understanding of regulatory delivery where the primary and ultimate purpose is the protection of safety, health, the environment, and other key elements of the public good. Implementing this approach relies heavily in promoting meaningful compliance – i.e. compliance that actually helps achieve regulatory goals – including by regularly using behavioral insights. It also requires i.a. effective risk communication and information to regulated subjects, development of, and investment in, methods and tools focused on delivering expected outcome, and adequate measurement of the level of protection of the relevant public welfare good. Regulated subjects should not be expected to know everything about what to do and how, but are to be guided, advised and informed. Finally, focusing on outcomes is inherently connected to having the right performance indicators and metrics – not measuring outputs or sanctions, but tracking the outcomes in terms of improved performance, reduced risks etc. (Blanc, 2018[44]); (Blanc, 2021[45]).

Some regulatory delivery agencies see as one of their main functions to support regulated subjects as risk creators in managing the risks they generate. This involves working in partnership with all stakeholders able to produce sustained change. Inspectors in Britain's Health and Safety Executive have long relied on an approach where law is the last resort and whereby they seek to engage with regulated businesses and push them towards safer practices through a variety of behavioural tools (i.e. personal relations, advice, comparisons with others, indication of potential risks and costs, hints at possible sanctions etc.) (Hawkins, 2003[46]). Results show better outcomes (in terms e.g. fatal and major accidents) than before the change of approach and/or in other sectors not using this new approach to the same extent.[9]

A decade ago, Britain's Health and Safety Executive issued the *Enforcement Management Model,* a detailed guidance of how inspectors should take enforcement decision based on risk assessment, compliance record of economic operator, specificity of rules etc.[10] A number of other inspection and enforcement services in various countries have developed and adopted principles or guidelines regarding their enforcement approach. Guidelines of this sort will be essential, going forward, to enable regulatory systems to cope with complexity and change, and situations "on the ground" that may be increasingly be

difficult to fully forecast at rulemaking-stage. In a positive development, some countries are seeking to make such approaches and guidelines more consistently used across regulatory areas (see Box 6.6).[11]

Box 6.6. Outcomes-focused checklists within the "Rating Audit Control" (RAC) project in Italy

The RAC project in Italy, funded by the European Commission and implemented by the OECD, aims at supporting regional and national governments in improving the business environment and investment climate and the efficiency of the use of public funds through improved regulatory predictability and confidence, and reduced burden on lower-risk activities. To achieve better outcomes in regulatory delivery, inspection methods and practices on the ground are being transformed, consistency of inspections improved, and efforts towards clearer and more understandable regulatory requirements for business operators undertaken.

One key tool to achieve this goal is work on risk-based checklists for inspections, which are being prepared in different regulatory areas so as to ensure development and consistency in methods, and to make a valuable contribution to improving matters in terms of outcomes. New checklists are being adapted to regional realities. They include a risk-based scoring system, and their results are being linked to an update in risk rating. By including the "static" risk of the establishment, its "dynamic" risks (actual risk management, such as the use of HACCP in food safety), and its compliance history (including measures imposed by inspectors because of violations leading to immediate risks), they yield a comprehensive picture of the establishment in terms of actual level of risk, and of most significant elements that need to be addressed to achieve the desired outcomes in terms of regulatory goals.

Source: internal OECD research – (OECD, 2021, forthcoming[40]).

Because the implementation of a more outcomes-, risk-focused approach entails important technical and professional dimensions, many prominent and successful initiatives are made in a specific sector or regulatory agency, rather than in a cross-cutting programme of reform. Some of the most interesting examples are presented below in Box 6.7, and typically include a variety of complementary tools and interventions to make the regulatory delivery work more effective and efficient.

Box 6.7. Sector specific risk based approaches

United Kingdom: Health and Safety

The Health and Safety Executive (HSE) is a non-departmental (i.e. not directly part of the Ministry's services, but autonomous) public body reporting to the Department for Work and Pensions with the core purpose to reduce work related injuries and ill-health. The HSE collaborates with a range of stakeholders in UK involved in health and safety and share responsibilities for regulatory control with local authorities. The HSE is both a regulator in the rule-setting sense, and a "regulatory delivery" agency, conducting inspections, investigations, developing and providing guidance and advice, and co-operating intensively with the industries it supervises so as to proactively manage and reduce risks. Internationally, the HSE has long been at the forefront of innovation in regulatory delivery methods, in particular in terms of compliance promotion (through guidance, collaboration with industry, long-term engagement etc.), risk-based targeting and risk-proportional enforcement. Risk-based targeting and planning methods are mainly enabled by "Find-it" application, an IT tool developed by HSE to enhance its regulatory delivery task.

Campania Region, Italy: Food safety

Between 2007 and 2010, Campania Region undertook a reform of the food safety inspection system, moving from a regulatory delivery regime mostly focused on deterring non-compliant behaviours to a risk-based system based on the requirements set in the EU Hygiene Package. The reform initiative took place based on a specific regulatory demand, following some major accidents and a breakdown of trust of the private sector and the public (due to insufficient official communication on risks and to the lack of effectiveness of the control activities related to risk management). The underlying systemic problems that prompted the reform initiative were, among others, the lack of a planning system of controls based on risk categorisation.

In order to address these problems, the initiative included a variety of elements supporting risk-based regulatory delivery, i.a. risk-based decision-making (including both risk-based enforcement and inspections planning), inspections processes and procedures, tools (checklists, IT system, etc.), Key Performance Indicators, human resources management, and vertical co-ordination. A main tool towards strengthening a risk-based approach introduced with the reform was the IT System.

As a result, the reform has led to the following: i) classification of economic operators in risk categories and planning of inspection frequency commensurate with the risk level; ii) Improvement of quality and quantity of information provided to the Ministry of Health and the EU, in accordance with applicable rules; iii) Systematic distribution of inspection visits over the territory of the Region; iv) Identification of emerging risks; v) Number of activities performed as defined by relevant objectives; vi) Better human resources management.

Canada and EU Mutual Recognition Agreement on drugs and medicinal products

A Mutual Recognition Agreement (MRA) is a legally binding treaty between the regulatory authorities of the two countries that are part of the agreement. It aims at enhancing international regulatory co-operation and maintaining high standards of product safety and quality, while facilitating the reduction of the regulatory burden for industries.

By the development of MRAs different countries accept the regulatory system of each other as equivalent for a certain type of goods, meaning that products in this category that are cleared for sale in one country will be accepted in the other. This typically applies to goods of a certain level of risk, i.e. for which pre-market approvals (or at least conformity assessment procedures) exist. Pharmaceuticals are one such high-risk area, where MRAs can significantly facilitate reciprocal market access, and thus the development of the sector.

The MRA between Canada and the EU on drugs and medicinal products is built, among other pillars, on the components of the Good Manufacturing Practices (GMP) Compliance Programmes. These components are used to determine the equivalence of the relevant regulatory programmes of both parties. A special chapter is devoted to the “inspection procedures” component, where inspections are grounded on a risk-based approach. This approach ensures that inspections focus on high-priority products in terms of risk posed. Thanks to the use of the risk-based approach and the mutual recognition mechanism, there is no need to duplicate inspections on the same products, and inspections can concentrate on higher priority products. As a result, inspection expenses and resources are reduced, while high standards and high-quality compliance programmes in international co-operation are maintained. This case shows the relevance of risk-based approaches also in a multilateral context and in the perspective of international regulatory co-operation.

Note: see also (OECD, 2013[47]) and (Kauffmann and Saffirio, 2020[48]).
Source: (World Bank Group, 2021[34]).

Compliance with regulations, and subsequent reduction in risks, has been found to be strongly related to the level of understanding of applicable rules and their rationale, as well as to the perceived consistency, fairness, coherence and decision-making transparency of authorities (Tyler, 1990[49]); (Tyler, 2003[18]); (Yapp and Fairman, 2006[50]); (Gunningham, 2015[51]). In addition, day-to-day work in businesses is dictated primarily by the *internal* rules, procedures and culture, rather than by external regulations, and it is largely to the extent that these internal procedures and culture align with regulation, that the latter is really effectively followed in this day-to-day work (Hodges, 2015[52]); (Hodges, 2018[53]). For all these reasons, regulatory delivery systems that try and increase coherence and consistency of decision making, embedding of regulatory objectives within internal processes and culture of businesses, and understanding of rules by business operators, can deliver important improvements in compliance and significantly improved management of risks. An interesting example is provided by the UK's "Primary Authority" scheme (see Box 6.8). In spite of constitutional and regulatory arrangements being very different, the approach has been considered with high interest by a variety of jurisdictions, for it combines a number of features relevant to most contexts: need to ensure greater consistency between different regions, to provide more predictability to businesses, to "embed" better regulatory objectives in business internal systems, etc.

Box 6.8. Primary Authority scheme: United Kingdom

"The Primary Authority scheme is firmly rooted in the Better Regulation principles that aim to reduce the administrative burden placed on businesses while promoting risk-based regulation. This involves: targeting inspection resources on high-risk enterprises reflecting local needs and national priorities; offering consistent (in advice and actions) and proportionate (to the risk) enforcement action; performing inspections in a transparent manner where businesses know what is expected of them and the local authority; and promoting accountability so regulatory activities stand up to public scrutiny."

In the United Kingdom, the majority of inspection and enforcement activities are carried out by local authorities, in some cases in addition to, or in parallel with, national agencies. In a context where vertical and horizontal co-ordination is sometimes missing – in spite of efforts at harmonisation within certain regulatory domains, in particular with national authorities ensuring unified guidance on risk-based regulatory implementation – businesses operating in several parts of the country faced a significant level of variation in interpretation and enforcement of regulations between the different local authorities. The Primary Authority's is a unique arrangement developed to tackle challenges stemming from the fact that inspections and enforcement were primarily under the local government's jurisdiction. This arrangement was aimed at reducing complexity, unpredictability (e.g. divergent approaches to risk) and costs for the private sector for firms operating in several locations. The solution pursued to tackle these challenges was to authorise select local authorities with a prevailing ("primary") role over others. This new governance framework better ensures that Primary Authorities had adequate competence in regulatory work, since only authorities with sufficient skills and resources can become "primary" in a given field.

The scheme has been developed further as a way not only to reduce local variations and ensure nationwide consistency for a given business, but also in order to provide more in-depth, specific guidance to business operators to comply with regulations (assured advice). From the beginning, agreements can cover broad or specific areas of environmental health, fire safety, licensing and trading standards legislation, and the scheme has progressively been extended to cover new areas of regulation.

Source: Excerpt of World Bank (n.d.), The Future of Business Regulation: Case Study: Promoting compliance – and going beyond. Evaluating the primary authority scheme report, prepared for the Local Better Regulation Offices, 2011.

Emerging technologies and risk-based regulation

There has been long-standing interest in the use of new technologies in regulation, and the "risk and regulation" perspective is particularly important here – both because these emerging technologies can help regulation become more risk-targeted and risk-proportional, but also because in the absence of a risk-based approach, there is a possibility of such technologies being misused in ways that result in regulatory overreach and intrusiveness. This can happen e.g. when remote surveillance tools are used too broadly or permanently, rather than strictly in conditions where the risk-level (high) and the risk characteristics (difficult to otherwise control or monitor) warrant it. There is also an additional link between technological regulatory solutions and the COVID-19 crisis, as the need to avoid risk of contagion has led to many regulatory and third-party inspections being suspended, with only the highest-risk controls still to be performed. This has put the onus both on the quality of risk-assessment, and on the potential for developing and using "remote audits", i.e. using technology to "inspect" without a site-visit.

Remote, "virtual" inspections can potentially save time and resources for regulatory supervision, increasing its efficiency, and its ability to reach remote locations or operate even in difficult circumstances (e.g. during lockdown situations such as imposed by the COVID-19 pandemic). Such virtual inspections involve inspectors reviewing documentary evidence and discussing with operators, but also observing sites through video streams. They are being considered or piloted in a number of jurisdictions and regulatory domains, and raise great interest because they could enable to save transport and staff costs (and environmental impact and time lost from transport), and reduce contamination risks, be it specifically in an epidemic context, or even in normal times for "sensitive" facilities where every extra visitor creates an added risk (see Box 6.9 for some examples). Nonetheless, they also present a considerable number of challenges and pitfalls.

Box 6.9. Virtual inspections experiments

In Finland, the Safety and Chemicals Agency ("Tukes") has been testing different types of inspections such as Skype inspections. The feedback has been positive and the Agency has plans to further digitise its Seveso inspections. Other authorities participated in the Skype inspection and this gives signs for broader use in the future. While the total duration of the Skype inspection did not differ much from a traditional inspection, travelling costs and time were not needed and the overall process was more efficient (e.g. sending and agenda of the inspection to the operator in advance, compiling the inspection report faster). Further work is needed to investigate whether Skype inspections should be kept for operators with generally good compliance records to prevent misinformation and potential dissimulation of problems that could happen when controls are exclusively remote.

With new urgency because of the constraints on movement and the need to minimise contagion risks in the COVID-19 context, virtual audits and inspections are under consideration or discussion in a number of countries and institutions, or being piloted to test their reliability and applicability. This is particularly important in food safety, because food production and supply are essential activities that cannot be suspended fully, and food safety inspections are both important to prevent food contamination, but also sources of potential risks of contagion. Challenges in doing such checks remotely include the difficulty to spot "hidden" problems, assurance against fraud, requirements for equipment, training and competence of staff in the facility to provide a "remote view", and of inspecting staff to analyse and challenge the results, etc. In addition, other risks (such as occupational safety and health) cannot be easily observed from outside, and even though they may not strictly belong to "food safety", they nonetheless can have a major negative impact if left unchecked. Such remote audits or inspections are being discussed or trialled e.g. in Canada and Italy. On the side of private certification, the Global Food Safety Initiative (GFSI) has decided to allow the use of remote audits in certain specific

cases and situations (https://mygfsi.com/blog/gfsi-remote-auditing-benchmarking-requirements-updates/): both auditor and audited must agree to use it, the technical conditions must be met, and remote auditing can only apply to a part of the audit but not the entirety of it (thus, it reduces contact while not eliminating it).

Source: (OECD, 2021, forthcoming[54]); direct interviews with regulators in Italy and Canada – GFSI website.

Though they offer interesting potential, virtual inspections are neither without problems, nor a panacea. Effectively assessing compliance and safety of a facility often involves being able to look around and spot "hidden" issues, observing how staff is working over a certain time-span, discussing with different employees, and a host of other observations that would be very difficult or impossible to replicate remotely. Moreover, even assuming situations where most of the risk elements can be readily observed remotely, an effective remote inspection still requires competent and trustworthy operators "on site", who are able (and willing) to go, film and transmit the aspects relevant for the inspection. This means that authorities need to identify qualified and competent persons from the inspected business to move ahead, and that trust is essential, since virtual inspections may give room for violations that will not be detected if operators intend to misinform inspectors. Finally, authorities need to be quite precise on what data to ask for, which elements, activities etc. should be observed and streamed, etc. On balance, virtual inspections appear to be an interesting new tool, that can be applied in certain well-defined circumstances in terms of need (remoteness/costs, contagion risks etc.), for certain industries and types of risks, and preferably in situations where the authority has grounds to hold the operator for "generally trustable", i.e. the inspection is more to check that previous positive findings are holding, rather than investigate an unknown or problematic situation. Overall, before such techniques of "remote inspections" can be used more widely, there needs to be further research on the conditions in which they can be applied, on what good practices exist to ensure they are properly risk-based (e.g. applied in lower- or medium-risk settings only, and also designed in ways that ensure potential risk areas "on site" are not missed) etc.

Technological improvements (e.g. remote sensors, drones, satellite imaging etc.) also provide possibilities to conduct surveillance of economic activities and/or of their impact remotely and constantly, without having to conduct on-site or even virtual inspections. This may be extremely useful where the vastness of territory to supervise is an issue, or for cases where damage may be considerable and impossible to prevent otherwise, e.g. to look at air and water pollution (remote monitoring), or conduct remote surveillance of illegal logging, overfishing, poaching etc. This can also be used to provide permanent supervision of key elements of particularly high-risk objects (e.g. structural stability of hydroelectric dams). Such approaches and tools, however, also should be used in the appropriate way, acknowledging their limits and potential problems.

There can be a temptation, based on recent progress in technology, to believe that "total control" is in fact possible - and desirable. This would lead to regulation that would not anymore try to be focused based on risk analysis and assessment, and rely on understanding of behaviour, trust and co-operation with good operators etc. Rather, in this vision of "automated total control", regulatory authorities would exert permanent surveillance using remotes, automated, connected devices. There are several reasons why such an approach is to be avoided, and why - on the contrary - new technologies should be used to make regulation more risk-based and targeted, not less:

- Technically, most regulatory areas cover a host of issues of considerable complexity, most of which do not lend themselves readily to remote surveillance (see above on virtual inspections). In this, they are very different from e.g. driving rules compliance, where remote surveillance has rapidly developed in the past couple of decades.
- Widespread reliance on remote sensors inside private companies would create huge information safety vulnerabilities.

- Large-scale, intrusive surveillance is intolerable from a human rights and civil liberties perspective.
- Crucially, given the intent of making regulation more effective, excessively heavy-handed supervision has been shown to backfire because it reduces voluntary compliance and induces resistance on the site of those subjected to it (see Box 6.10).

Box 6.10. Remote surveillance

As indicated in previous sections, interesting experimentations are being done or considered in a number of fields – such as environmental protection, energy networks and mining, food safety etc. In such examples, remote surveillance aims at identifying emerging harms, assessing outcomes and risks, and monitoring critical infrastructure. In the same way, remote sensors can be used to monitor strains on high-risk objects such as bridges, tunnels, or dams. When used as a tool to assess and provide early warning of risks, and cover areas, which are difficult to reach, remote surveillance appears to be a promising and precious tools.

In some fields, however, remote surveillance is used as a direct enforcement tool – e.g. automated cameras for speeding or compliance with other driving rules. Automated, remote surveillance is increasingly used in monitoring compliance with rules for long-distance trucking (particularly international shipments). While these developments can provide interesting ways to improve safety in sectors, where traditional “human” supervision is difficult (transportation being a prime example), they are not without downsides. Indeed, taking automated speed cameras (the most widespread type of remote regulatory surveillance) as example, the impact on compliance and safety appears positive, but to a degree that is highly variable (Pilkington and Kinra, 2005[55]), so that they should be understood as only one element of a broader system, and certainly not a “silver bullet” solution that can work on its own (Ali, Al-Saleh and Koushki, 1997[56]).

In recent years, systems have been developed to measure not only the instantaneous speed of cars, but also their average speed, and thus possibly allow to enforce speed limits on closed roads (motorways) very effectively. The increasing availability and decreasing costs of remote, connected sensors could potentially allow to control remotely cars' speed in a permanent way - but also many other parameters and activities. For instance, a network of surveillance cameras could check who works in a given establishment, whether all workers wear e.g. safety equipment, whether at least some simple safety measures are complied with. Remote sensors could conceivably check at all times whether temperature parameters are complied with.

Increasing reliance on remote surveillance for enforcement purposes rests on the assumption not only that technology will not fail and that it will not be hacked. Both assumptions are very fragile. Thus, it remains in fact just as important to promote voluntary compliance so as to minimise the amount of fraud and enable to focus enforcement efforts on criminal behaviour, while fostering voluntary compliance as much as possible. Relying on a very large number of connected devices linked to the regulator's network also creates major security vulnerabilities. The potential for hacking and misuse of the 'internet of things' is indeed well known and abundantly documented. Another issue is the major negative effect of intrusive technological control and "automated enforcement" on trust, legitimacy of authorities and regulations, and voluntary compliance. As already indicated above, enforcement that is perceived as overly burdensome or hostile leads to a net reduction in compliance, e.g. as observed in tax compliance studies (Kirchler, Hoelzl and Wahl, 2008[57]). Because automated enforcement (particularly if the imposition of sanctions is automatic) is very much at odds with key dimensions of procedural fairness (such as the possibility of the regulated person to have a “voice” in the process, an explanation of the principles of the decision, and a demonstrated attention to circumstances) (Lind, Kanfer and Earley, 1990[58]). The feeling of unfairness experienced, even in minor cases, can be a negative driver of future

compliance, and automated surveillance and enforcement eventually weaken the overall regulatory compliance level.

Source: (OECD, 2021, forthcoming[54]); (Mangalam, 2020[39]).

Risk-based regulation in the COVID-19 crisis and its aftermath

The COVID-19 crisis, both in its health and its economic and social dimensions, has been fundamentally about risk assessment, uncertainty, and risk management. At every step, governments have had to balance different types of risks. First, and most visibly, the direct health risk posed by the pandemic, and the negative economic and social impact (including *other* negative health risks) generated by "strong" responses such as lockdowns. Here again, accurately estimating the two sides of the risk equation is difficult, because predicting the negative effect of a lockdown may be possible (and measuring it *ex post* certainly is), but the comparison should not be made with an ideal baseline of "business as usual", but against the economic crisis created by aggregated individual reactions in a "*laissez faire*" approach to managing the pandemic (Goolsbee and Syverson, 2020[59]).

In addition, one of the many difficulties of responding to the COVID-19 pandemic has lain in assessing the real extent of the pandemic spread and impact in different countries. Because of the significant percentage of asymptomatic cases, assessing incidence and prevalence is problematic. Very few countries have been able to have a testing coverage and approach (and/or a successful epidemic suppression response) that make the official number of cases likely to be close to the real number. The reported number of COVID-19 deaths is also problematic because of various degrees of under-reporting (deaths at home are typically not recorded, and deaths in care homes often are not – even deaths in hospital may not be recorded homogeneously between jurisdictions). To compensate for this, it is possible to look at the difference in mortality between the relevant months of 2020 and the previous years' average (Banerjee et al., 2020[60]). Thus, even estimating the most "visible" part of the COVID-19 risk (deaths) is difficult – not to speak of the long-term health effects for non-fatal cases, which will become clear only over time (Halpin et al., 2020[61]); (Mitrani, Dabas and Goldberger, 2020[62]). Thus, in spite of its salience, the pandemic poses a first challenge to risk-based regulatory approaches – through the very high level of uncertainty.

The crisis also highlighted difficulties linked to the public procurement system (OECD, 2020[63]), including linked to co-operation and competition between jurisdictions. From a risk perspective, what is striking is that many public procurement regulatory systems have been built on very strong "risk averse" premises, aiming at excluding corruption risks, or at least mounting strong legal defenses against corruption accusations. Whether such systems have been effective or not at combating corruption is another question, but in a crisis context their rigidity created major problems for many countries – with normal procurement rules being far too slow and burdensome, emergency procurement provisions being either absent or inadequate, etc. (OECD, 2016[64]). In other words, regulations and regulatory processes created to combat one risk (corruption) can end up decreasing resilience and responsiveness in crisis situations and thus worsen the vulnerability to other risks (e.g. health). This is a strong illustration of the importance of designing rules and procedures that are focused, proportional, and tackle risks in the most efficient way possible, to minimise unintended negative consequences (OECD, 2020[65]).

The crisis has also been marked by the difficulty to manage health risks in situations where each side of the possible regulatory decision leads to increasing different elements of risk – rather than being a clean trade-off between costs and safety. The use of virtual inspections to address certain situations where the inspection may be both a way to control risks, and a risk factor (contagion risk) in itself, has been discussed in the previous section (see also Box 6.11) on their use to conduct food safety inspections in crisis context). Beyond this, and with much larger impact, approval and control procedures, created to minimise risks from

health-care supplies (such as face-masks or hand sanitizer), or from faulty devices or tests, became at the same time elements of increased risk because they sometimes increased shortages or delayed testing. Managing the uncertainty involved in preparing for potential crises, or in developing the response to a new threat that is incompletely understood, is always difficult. Significant expenditure and measures for a threat that turns out to be disappointing can make it harder to convince citizens of the need to prepare future, and this highlights the need to nurture more "mature" public conversations about risk and resilience, so that broader support can be mobilised and maintained. Insufficient work has been done so far on how to move the public discourse beyond a pendulum swing between "cut wasteful spending" and "panic and blame". Important contributions were made as part of the Dutch *Risk and Responsibility Programme* in 2010-15 (Helsloot and Schmidt, 2012[66]); (Trappenburg and Schiffelers, 2012[67]). Public perceptions and attitudes towards risk, preparedness, government expenditure etc. are hard and slow to change – hence the importance of engaging in a risk-based regulatory approach in a long-term and transparent way.

Box 6.11. "Rebooting" food safety inspections to face the COVID-19 crisis

Restriction of on-site inspections to critical situations and issues only

Widespread restrictions on travel and mobility together with workplace social distancing rules and temporary closure of business created specific obstacles to in-person inspections, a critical tool for surveillance of compliance with food safety regulations. As a direct result, some countries and regulators chose to scale-back or halt in-person inspections or other compliance activities, **prioritising controls of high-risk situations focusing exclusively on critical safety issues** – so as to minimise possible virus exposure for inspectors and workers.

For example, the **Canadian Food Inspection Agency** (CFIA) continuity business plan prioritised critical activities and suspended more low-risk visits and checks such as food inspections and sampling activities not related to food safety. The **US FDA** postponed most foreign facility inspections and all domestic routine surveillance facility inspections while maintaining only all mission-critical assignments (for instance, domestic for-cause inspection).

Uptake of remote food safety inspections and audits

New technology, modernisation of systems, and new smarter strategies helped increase enforcement capacity during the crisis. The adoption of new methods as an attempt to overcome the mobility restrictions and social distancing rules accelerated the introduction of services that simplified processes and increased operational efficiency. As on-site inspections were rendered impracticable due to numerous mobility, access, or packaging restrictions, countries started devising strategies to **design and adopt remote tools to ensure the continuation of inspection activities**.

For example, in **Canada**, the CFIA received funds for the purpose of hiring and training staff to conduct critical inspections and to carry out enforcement activities through the use of digital tools. The CFIA also developed criteria for remote audits of the certification bodies to reduce on-site activities under Canada's Organic Regime.

The **US FDA** adopted remote inspections under its Foreign Supplier Verification programs (FSVP), applicable to importers of food for humans and animals, which shifted to electronic review of records and a limited number of on-site inspections, prioritising the inspections of FSVP importers of food from foreign suppliers whose onsite food facility or farm inspections were postponed due to the health emergency.

Source: (OECD, 2020[68]); (OECD, 2020[69]); Temporary Policy Regarding Certain Food Labeling Requirements During the COVID-19 Public Health Emergency: Minor Formulation Changes and Vending Machines Temporary Policy Regarding Certain Food Labeling Requirements During the COVID-19 Public Health Emergency: Minor Formulation Changes and Vending Machines; U.S. Department of Health and Human Services Food and Drug Administration (2020), Temporary Policy Regarding Packaging and Labeling of Shell Eggs Sold by Retail Food Establishments During the COVID-19 Public Health Emergency Temporary Policy Regarding Packaging and Labeling of Shell Eggs Sold by Retail Food Establishments During the COVID-19 Public Health Emergency; U.S. Food and Drug Administration (2020), Temporary Policy Regarding Nutrition Labeling of Certain Packaged Food During the COVID-19 Public Health Emergency Temporary Policy Regarding Nutrition Labeling of Certain Packaged Food During the COVID-19 Public Health Emergency; Canadian Food Inspection Agency (2020), Information regarding certain labelling requirements for foodservice products during the COVID-19 pandemic. Information regarding certain labelling requirements for foodservice products during the COVID-19 pandemic; Danish Veterinary and Food Administration (2020), Coronavirus and food - retail, supermarkets and manufacturing companies Coronavirus and food - retail, supermarkets and manufacturing companies.

Thus, on the positive side, the COVID-19 emergency has served as an opportunity for many regulators to demonstrate remarkable agility and flexibility in introducing frameworks or adjusting regulations[12] (see Box 6.12 for examples in two regulatory areas). In the post-COVID era it will be necessary to learn from the best practices that have emerged in adopting agile regulatory approaches and demonstrating flexibility in applying requirements, managing procedures and enforcing rules.[13] As indicated in the opening chapter of this Outlook, "agility" is a key element of adapting regulatory frameworks to the combination of new technologies, increased transnational flows, and emerging risks. The innovative and flexible implementation of risk-based regulatory approaches seen in this crisis context can provide some useful examples in this regard.

Box 6.12. Regulatory easing measures in COVID-19 crisis

Regulatory easing measures in food safety: the example of food labelling requirements

Facing the COVID-19 crisis, regulators across countries adopted **temporary administrative and regulatory flexibilities** to help **ease operations of business and industries** while safeguarding sustained compliance. The pandemic brought particular challenges to authorities responsible for food safety regulation, sector that saw additional obstacles from shocks in all segments of the food supply chains and shifts in demand from food supplied to retail businesses in lieu of restaurant or other food service establishment. In response, a number of **food safety regulators adjusted food-labelling requirements to limit the impact of supply chain disruptions on product availability:**

- The **United States Department of Health and Human Services Food and Drug Administration** (FDA) issued guidance allowing for temporary labelling flexibilities under certain circumstances, permitting manufacturers to make minor formulation changes without reflecting them on the package label. To meet increased demand for eggs, the FDA issued temporary flexibility guidance on certain packaging and labelling requirements for eggs sold in retail establishments. Additional guidance on labelling easements was issued to allow restaurants to sell packaged food to consumers.
- The **Canadian Food Inspection Agency** (CFIA) also provided flexibility for labelling requirements for foodservice packaged products deemed to have no or limited impact on food safety as part of a broader temporary suspension of some low-risk suspended activities.
- The **Danish Veterinary and Food Administration** temporarily waived labelling requirements of country of origin and accepted the retail sale of pre-packaged food not labelled in Danish provided that it complied with the requirements of the Food Information Regulation.

Source: CFIA (2020), Government of Canada provides $20 million to safeguard Canada's food supply by supporting critical food inspection services; U.S. Food and Drug Administration (2020), Coronavirus (COVID-19) Update: FDA Focuses on Safety of Regulated Products While Scaling Back Domestic Inspections; FDA (2020), FDA To Temporarily Conduct Remote Importer Inspections Under FSVP Due to COVID-19.

Flexible regulation in health and social care – a new strategy for the English Care Quality Commission

The Care Quality Commission (CQC), the independent regulator of health and social care in England, has issued a new draft strategy for consultation built on four themes:

People and Communities: new ways to gather experiences, record and analyse them will be identified. This way, changes in the quality of care can be more easily detected, facilitated by a new assessment framework, designed to enhance trust among the public.

Smarter Regulation: the intent is to regulate in a more dynamic and flexible way to reflect the anticipated – and non-anticipated – changes.

Safety though learning: Stronger safety and learning cultures are prioritised and at the centre of a better quality service delivery in health and care. The CQC particularly wants to focus on types of settings with greater risk of a poor safety culture being unrevealed to understand, address and improve safety. Services will have to respond to targeted concerns on the measures taken to learn and improve safety. This information will be shared with the public.

Accelerating improvement: The new strategy aims at the establishment and facilitation of national sector-wide improvement coalitions with a broad spectrum of partners (including representatives of services users) to collaboratively work on better policies and practices to ensure better availability of support, both nationally and at a local system level.

Source: https://www.cqc.org.uk/get-involved/consultations/world-health-social-care-changing-so-are-we ; https://soundcloud.com/carequalitycommission/cqc-strategy-2021-our-public-consultation; https://carequalitycomm.medium.com/changing-how-we-regulate-to-improve-care-for-everyone-7accf34d30c1 https://www.cqc.org.uk/get-involved/consultations/world-health-social-care-changing-so-are-we.

Conclusion

Regulation and risk is a central topic – because a considerable amount of regulation is designed and adopted, at least notionally, to prevent or mitigate risks, both empirically measured and subjectively perceived. *Risk-based regulation,* which aims at making the regulatory response tailored to the specifics of each risk, and proportional to the relative importance of different risks, thus holds the potential to make regulatory systems more efficient, more effective, more resilient and responsive in times of crisis, and also better able to communicate meaningfully about their objectives, capacity, and results.

While the uptake from risk-based approaches is far from universal across jurisdictions and regulatory fields, and often less-than-thorough, there has been significant progress over the past few years, including through the development of innovative projects and programmes, leveraging emerging technologies, co-operation, information sharing, insights from behavioural insights, etc. There is much to learn from, and implementation of risk-based regulatory delivery, in particular, is easier than it used to be because of computing advances.

The "how" of risk-based approaches to regulation is increasingly well known, in spite of challenges linked to uncertainty in many areas, and a range of tools, examples, methods etc. exist that can be relatively easily adapted or adopted to make technical requirements, procedures, processes, inspections and enforcement more targeted and proportional to risk.

A point that remains more problematic is enabling risk-based approaches and ensuring their sustainability, not so much on legal grounds (where good examples exist), as in terms of public perceptions and support. Risk-based approaches can be difficult to understand and accept for a number of reasons: conflicts between risk perceptions and scientific risk assessments, reluctance to accept risk and relinquish a promise of "total protection" (even if it never was a promise that could actually be kept), difficulty to manage expectations when risks are only potential (and may not be realised), etc. Still, the fact that engaging on risk-based regulation with the public is difficult does not mean it should not be done – in fact, it makes such engagement all the more necessary and urgent (Burgess, Burgess and Leask, 2006[70]); (Chilvers and Burgess, 2008[71]).

The importance of transparent engagement with the public on risk (i.e. going beyond just risk communication, but also inviting and responding to public input) is linked to the broader issue of public trust in government and legislation, which has become particularly acute in recent years (De Benedetto, 2021[72]). Regulatory approaches that are *not* risk-based and risk-proportional, i.e. that strive for an ideal "zero risk" through rigid and highly burdensome requirements and procedures, appear according to recent research to contribute to reducing public trust instead of reinforcing it (De Benedetto, 2018[73]); (Blanc, 2021[74]).

Technological advances provide major opportunities for the broader, more systematic, more accurate and effective application of risk-based principles. This is particularly the case with more integrated, better managed data systems, and modern tools for analysis (e.g. Machine Learning), which can give far better insights on the most relevant risk factors, their relative importance, the emergence of new risks, the locations to focus on, etc.

Given a topic with so many ramifications and factors, this chapter can only provide a first overview, the start of a discussion, and tentative findings. Still, the issue matters enough that even such a provisional conclusion can potentially contribute to starting to solve this "crisis of confidence". The gist of the argument is that regulations and regulatory systems are established, or at least so it is assumed and/or proclaimed, in order to strengthen, enable, (re)establish trust – but that they may sometimes be worse than failing at the task, but even actively increasing distrust.

Risk-based approaches to regulation and regulatory delivery appear as the most effective way to avoid the twin pitfalls of excessive rigidity and excessive discretion (Baldwin, 1990[13]). Properly understood and defined risk and proportionality offer instruments to adequately found and bound regulatory discretion, and modulate regulatory enforcement responses. Embedding risk-proportionality at the core of regulatory systems thus appears to be the most effective way to give them the adequate legitimacy, resilience, agility and effectiveness.

Notes

[1] In particular the Society for Risk Analysis https://www.sra.org/ but also a number of regional or subject-specific networks, specialised academic journals etc.

[2] Among these, the fundamental legislation for the EU Single Market such as the Industrial Emissions Directive (EU Dir. 75/2010), the Food Hygiene Package (Reg. EU 852-853-854/2004) and related Official Controls Regulation (Reg. EU 625/2017), the recent Market Surveillance Regulation (Reg. EU 1020/2019) – but also in major US legislation (Food Safety Modernization Act 2011) and of course brought to the fore

largely through pioneering work by the US EPA in the 1980s (see https://www.epa.gov/risk/about-risk-assessment#tab-2).

[3] See for instance: https://irgc.org/publications/core-concepts-of-risk-governance/.

[4] See e.g. *Codex Alimentarius* principles: http://www.fao.org/3/a0247e/a0247e04.htm#:~:text=The%20risk%20analysis%20should%20follow,to%20the%20overall%20risk%20analysis and http://www.fao.org/3/Y4800E/y4800e0o.htm - FAO guidance: http://www.fao.org/3/i0096e/i0096e00.htm.

[5] SPS Art. 5 and Annexes A and B, available at: https://www.wto.org/english/tratop_e/sps_e/spsagr_e.htm – TBT Art. 2 and 5, https://www.wto.org/english/docs_e/legal_e/17-tbt_e.htm.

[6] Available at: https://www.oecd.org/gov/regulatory-policy/49990817.pdf.

[7] See Food Safety STL Project, summary available at: https://dash.harvard.edu/bitstream/handle/1/34492285/5540821.pdf?sequence=1 and report on Nevada nEmesis project available at: https://www.nsf.gov/news/news_summ.jsp?cntn_id=137848.

[8] For concrete examples, see the whole range of country profiles of food safety control systems prepared by the European Commission DG SANTE, available at: https://ec.europa.eu/food/audits-analysis/country_profiles/index.cfm.

[9] See for example Health and Safety Executive (HSE) (2016), The effectiveness of HSE's regulatory approach: The construction example (Prepared by Frontline Consultants for the Health and Safety Executive in 2013).

[10] Enforcement Management Model, available at: https://www.hse.gov.uk/enforce/emm.pdf.

[11] See for example Greece through art. 149 of law 4512/2018 reforming inspections and licensing.

[12] See for instance regulatory COVID response of Canada: https://www.fintrac-canafe.gc.ca/COVID19/flexible-measures-eng and https://www.inspection.gc.ca/about-cfia/acts-and-regulations/forward-regulatory-plan/targeted-regulatory-review/eng/1558026225581/1558026225797.

[13] See also pre-COVID policies to make regulation more agile and responsive in Canada: https://www.canada.ca/en/treasury-board-secretariat/news/2018/09/canada-revamps-its-directive-on-regulations---more-agile-transparent-and-responsive-so-businesses-can-thrive.html and https://www.canada.ca/en/health-canada/services/drugs-health-products/public-involvement-consultations/drug-products/enabling-advanced-therepeutic-products-modernizing-regulation-clinical-trials.html.

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7 Country profiles

Australia

Overview and recent developments

Overall Australia continues to have sound regulatory management practices in place. Recent announcements have continued Australia's deregulation approach that has largely been in place in one guise or another since 2013.

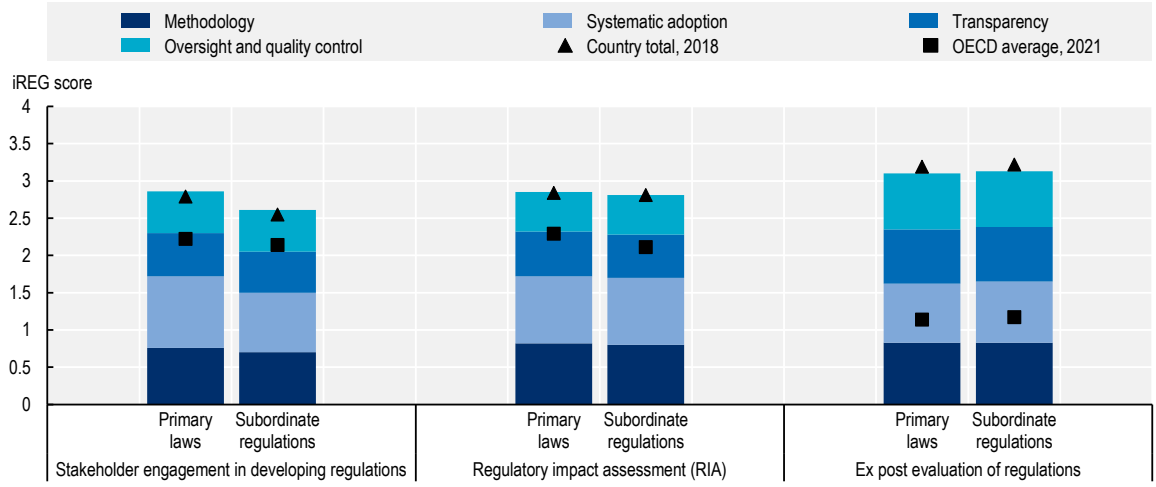
Australia updated its Best Practice Consultation guidance note to help ministries better prepare to engage with stakeholders, as well as to understand the role that the oversight body plays. Notwithstanding these changes, Australia would benefit from an increased focus on stakeholder engagement prior to a regulatory decision having been made, especially with regards to subordinate regulation.

Outcomes from a confidential review into the functioning of the oversight body resulted in a simplified regulatory impact assessment (RIA) process by replacing four types of regulation impact statement with one. It removed the requirement to have regulatory costs formally agreed with the oversight body. It also changed the levels of assessment that the oversight body provides on individual regulatory proposals.

One important change to Australia's RIA requirements was that third-party reviews are now subject to scrutiny from the oversight body when relied upon by proposing ministries. Post-implementation reviews (PIRs) are generally required where proposals have avoided *ex ante* scrutiny during their initial development. In practice, Australia's RIA scope has ensured that exemptions from RIA are granted exceedingly sparingly. It will be important to maintain this key tenet of the Australian system – even in the face of recent rapid decision making – and continue to ensure that exemptions are only triggered for genuine unforeseen emergencies. The timing of PIRs could be improved to ensure that data collection and monitoring impacts are immediately put in place to establish a baseline for the eventual evaluation. In time consideration could be given to overseeing more general reviews of regulations such as those conducted under automatic review clauses and sunsetting provisions as part of closing the regulatory loop.

The Regulatory Policy Branch was transferred from the Department of Jobs and Small Business to the Department of the Prime Minister and Cabinet, as part of a series of organisational changes completed in January 2020. It has been entrusted with new responsibilities such as ensuring that agencies identify and drive relevant regulatory reforms, and an officer-level interdepartmental process has been set up to promote better regulatory practices and culture. The Office of Best Practice Regulation (OBPR) is also located at the centre of government and reviews about 1 500 policy proposals every year. OBPR is developing a bespoke IT system for RIA aimed at improving workload management related to overall RIA scrutiny as well as the quality of impact analysis advice. In addition to standard consultation processes related to RIA, OBPR meets with stakeholders on a regular basis to gather feedback on RIA processes as well as on policy areas facing challenges in bringing together high-quality evidence or analysis.

Indicators of Regulatory Policy and Governance (iREG): Australia, 2021



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 Australia).
Source: Indicators of Regulatory Policy and Governance Surveys 2017 and 2021, http://oe.cd/ireg.

Australia: Transparency throughout the policy cycle

Inform the public in advance that:	A public consultation is planned to take place	
	Regulatory impact assessment (RIA) is due to take place▲	
	Ex post evaluations are planned to take place	
Consult with stakeholders on:	Draft regulations	
	Evaluations of existing regulations	
Publish online:	Ongoing consultations*	
	Views of participants in the consultation process▲	
	RIAs	
	Evaluations of existing regulations▲	
Policy makers use:	Interactive website(s) to consult with stakeholders▲	
	Website(s) for the public to make recommendations on existing regulations▲	
Policy makers provide a public response to:	Consultation comments▲	
	Recommendations made in *ex post* evaluations■	

All/■Always/▲Yes
Major/■ Frequently
Some/■ Sometimes
Never/▲ No
* Publish on a single central government website.
Note: The data reflects Australia's practices regarding primary laws initiated by the executive.
Source: Indicators of Regulatory Policy and Governance Survey 2021, http://oe.cd/ireg.

Austria

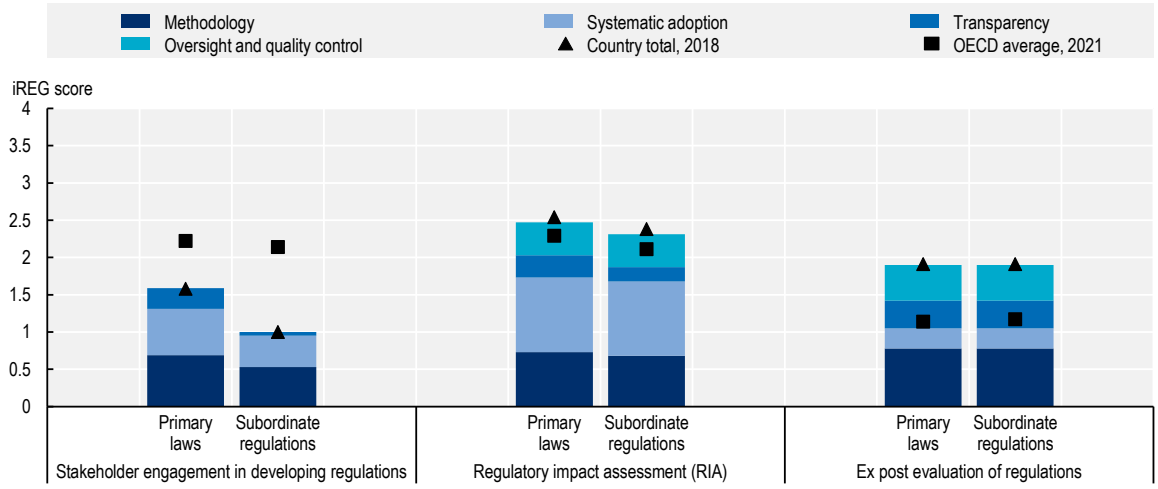
Overview and recent developments

In Austria, regulatory impact assessment (RIA) has been mandatory for all primary laws and subordinate regulations since 2013. A comprehensive threshold test introduced in 2015 determines whether a simplified or full RIA has to be conducted for draft regulations. A simplified RIA is carried out for about two thirds of all regulations. The methodology for a full RIA requires the assessment of a range of impacts, including on the environment, social aspects, and gender equality. The aforementioned 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. In 2019, a principle-based *ex post* review of 200 federal laws has been carried out with a view to reducing administrative burdens stemming from gold-plating.

The Federal Performance Management Office (FPMO) at the Federal Ministry for Arts, Culture, Civil Service and Sport (BMKOES) reviews the quality of all full RIAs and *ex post* evaluations and controls and supports the application of threshold tests for RIA *light*. It publishes its opinions on RIAs for primary laws and can advise civil servants to revise RIAs if not up to standard. The FPMO also issues guidelines, provides training on RIA and *ex post* evaluation and co-ordinates these tools' use across government. In addition, it reports annually to Parliament on RIA and *ex post* evaluation results. The Ministry of Finance supports the FPMO by reviewing assessments of financial impacts and costs in RIAs and *ex post* evaluations, and is also involved in issuing guidelines on the application of these tools.

A resolution by the Austrian Parliament 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. Since August 2021, the public can also submit comments on all legislative initiatives introduced in Parliament, i.e. government bills, MPs' and popular initiatives during their parliamentary deliberation and support comments made by others online. Furthermore, an interactive crowdsourcing platform has been launched in 2018 to provide the public with an opportunity to express their views ahead of parliamentary initiatives, like the extension of access to open data in 2021. Extending the use of the platform to include consultations on policy issues 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, and from introducing systematic quality control of engagement processes.

Indicators of Regulatory Policy and Governance (iREG): Austria, 2021



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 Austria).
Source: Indicators of Regulatory Policy and Governance Surveys 2017 and 2021, http://oe.cd/ireg.

Austria: Transparency throughout the policy cycle

Inform the public in advance that:	A public consultation is planned to take place	
	Regulatory impact assessment (RIA) is due to take place▲	
	Ex post evaluations are planned to take place	
Consult with stakeholders on:	Draft regulations	
	Evaluations of existing regulations	
Publish online:	Ongoing consultations*	
	Views of participants in the consultation process▲	
	RIAs	
	Evaluations of existing regulations▲	
Policy makers use:	Interactive website(s) to consult with stakeholders▲	
	Website(s) for the public to make recommendations on existing regulations▲	
Policy makers provide a public response to:	Consultation comments▲	
	Recommendations made in *ex post* evaluations■	

All/■Always/▲Yes
Major/■ Frequently
Some/■ Sometimes
Never/▲ No
* Publish on a single central government website.
Note: The data reflects Austria's practices regarding primary laws initiated by the executive.
Source: Indicators of Regulatory Policy and Governance Survey 2021, http://oe.cd/ireg.

Belgium

Overview and recent developments

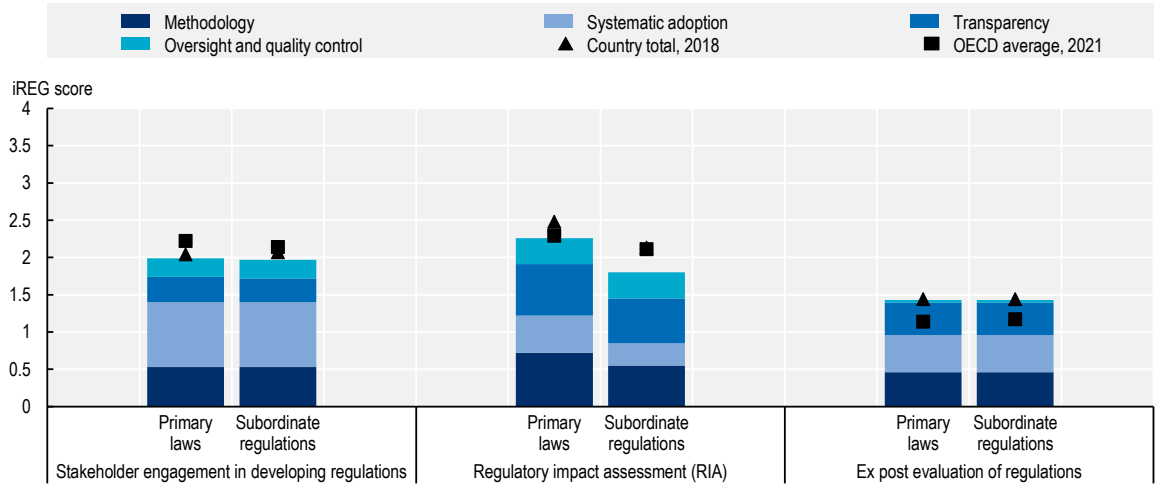
Belgium has not improved its institutional and policy framework for regulatory quality at the federal level over the last years. Regulatory impact assessment (RIA) is mandatory for all primary and for some subordinate legislation submitted to the Cabinet of Ministers at the federal level and is usually shared with social partners as a basis for consultation. RIAs for subordinate regulations are however no longer published. Belgium currently does not systematically require an identification and assessment of alternatives to the preferred policy option.

Periodic *ex post* review of legislation is mandatory for some legislation and sunsetting clauses are sometimes used. The Court of Audit is involved in undertaking ad hoc “in-depth” reviews on specific regulatory areas such as agriculture, energy or youth.

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. It is also in charge of defining and ensuring the application of cost assessment methods in this context. The ASA is supported by the Impact Assessment Committee (IAC), which provides advice on RIAs upon request by the responsible ministry and reports annually on the quality of RIAs and functioning of the RIA process. The IAC is also part of a project aimed at establishing a government-wide regulatory agenda to co-ordinate and monitor the legislative process. 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.

Consultation and engagement could be further strengthened. For example, consultation with the general public are held on an ad hoc basis by some ministries and are published on their individual ministerial webpage, as there is currently no single central government website listing all ongoing consultations. Systemising the use of consultation for both primary and subordinate regulations across all ministries as well as developing a central platform on which all consultations are published would enhance the transparency and accountability of the regulatory system in Belgium. While RIA can be shared with social partners during consultation, it is not released for consultation with the general public.

Indicators of Regulatory Policy and Governance (iREG): Belgium, 2021



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 (61% of all primary laws in Belgium).
Source: Indicators of Regulatory Policy and Governance Surveys 2017 and 2021, http://oe.cd/ireg.

Belgium: Transparency throughout the policy cycle

Inform the public in advance that:	A public consultation is planned to take place	
	Regulatory impact assessment (RIA) is due to take place▲	
	Ex post evaluations are planned to take place	
Consult with stakeholders on:	Draft regulations	
	Evaluations of existing regulations	
Publish online:	Ongoing consultations*	
	Views of participants in the consultation process▲	
	RIAs	
	Evaluations of existing regulations▲	
Policy makers use:	Interactive website(s) to consult with stakeholders▲	
	Website(s) for the public to make recommendations on existing regulations▲	
Policy makers provide a public response to:	Consultation comments▲	
	Recommendations made in *ex post* evaluations■	

All/■Always/▲Yes
Major/■ Frequently
Some/■ Sometimes
Never/▲ No
* Publish on a single central government website.
Note: The data reflects Belgium's practices regarding primary laws initiated by the executive.
Source: Indicators of Regulatory Policy and Governance Survey 2021, http://oe.cd/ireg.

Canada

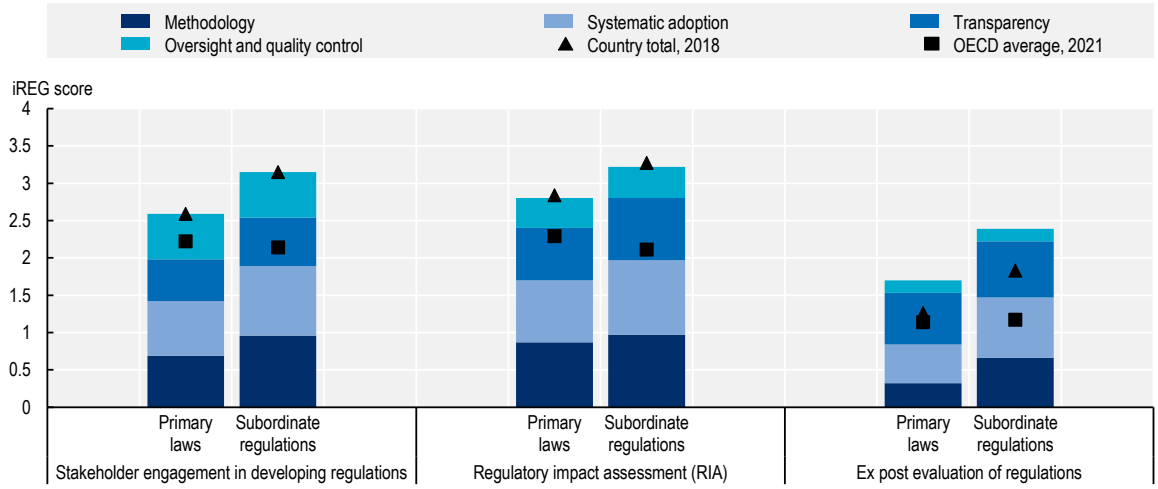
Overview and recent developments

Canada has updated their previous *Cabinet Directive on Regulatory Management* with the *Cabinet Directive on Regulation* (CDR) in 2018. It mandates government departments and agencies to conduct *ex post* evaluation on all subordinate regulations and provides guidance and trainings to policy makers on how to carry them out. In 2018, Canada also introduced Targeted Regulatory Reviews (TRRs) as part of their regulatory framework. These reviews support the government's broader agenda towards regulatory modernisation, and address regulatory requirements and practices that seem to cause bottlenecks to innovation, growth and competitiveness. In 2019, the first round of TRRs were completed and led to nearly 70 proposals for regulatory and legislative amendments, improvements to regulatory practices, and novel regulatory approaches.

RIAs continue to be mandatory and publicly available via a central registry along with their draft legal text for subordinate regulations only. The CDR reinforced requirements for the analysis of environmental and gender-based impacts and enshrines regulatory co-operation and consultation throughout the regulatory cycle. Canada conducts open consultation by a variety of mechanisms, including over online government portals for draft subordinate regulations. The public can submit comments on consultations on the central government portal or directly to regulators themselves. Generally, once the consultation process is over, a summary of received comments is made publicly available in the final version of the RIA.

The Treasury Board of Canada Secretariat (TBS) oversees subordinate regulations, and provides a review and challenge function to ensure quality RIA, consultation, and regulatory co-operation. It supports the Treasury Board, a Cabinet committee that considers and approves regulations. A Centre for Regulatory Innovation has also been established at TBS to help businesses work with regulators to facilitate regulatory experiments and test emerging technologies. It aims to encourage innovation while safeguarding consumer trust and confidence. For primary laws, the Privy Council Office supports Cabinet in its assessment and approval of legislative proposals destined for parliamentary consideration. Canada could enhance existing oversight by regularly evaluating the quality of consultations and of *ex post* evaluations. The results of these evaluation could be made publicly available along with suggestions for improvement.

Indicators of Regulatory Policy and Governance (iREG): Canada, 2021



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 (72% of all primary laws in Canada).
Source: Indicators of Regulatory Policy and Governance Surveys 2017 and 2021, http://oe.cd/ireg.

Canada: Transparency throughout the policy cycle

Inform the public in advance that:	A public consultation is planned to take place	
	Regulatory impact assessment (RIA) is due to take place▲	
	Ex post evaluations are planned to take place	
Consult with stakeholders on:	Draft regulations	
	Evaluations of existing regulations	
Publish online:	Ongoing consultations*	
	Views of participants in the consultation process▲	
	RIAs	
	Evaluations of existing regulations▲	
Policy makers use:	Interactive website(s) to consult with stakeholders▲	
	Website(s) for the public to make recommendations on existing regulations▲	
Policy makers provide a public response to:	Consultation comments▲	
	Recommendations made in *ex post* evaluations■	

All/■Always/▲Yes
Major/■ Frequently
Some/■ Sometimes
Never/▲ No
* Publish on a single central government website.
Note: The data reflects Canada's practices regarding primary laws initiated by the executive.
Source: Indicators of Regulatory Policy and Governance Survey 2021, http://oe.cd/ireg.

Chile

Overview and recent developments

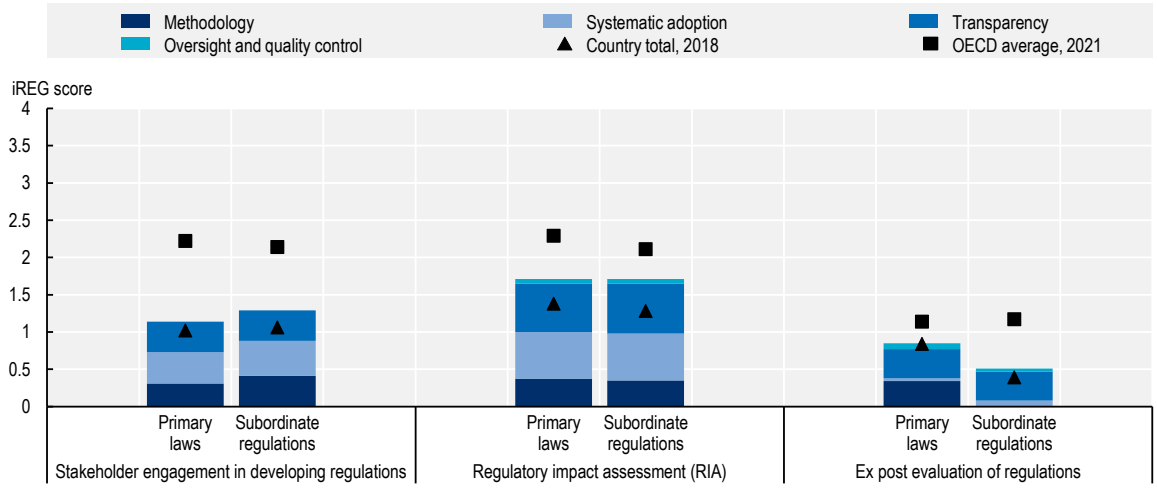
Chile has made important improvements to its regulatory management tools over the last years. In 2019, Chile adopted Presidential Instructive No. 3/2019, which broadens the requirement to conduct regulatory impact assessments (RIA), making it mandatory for all primary laws initiated by the executive and for subordinate regulations. It establishes a threshold for conducting RIAs, which will determine whether a standard or high impact RIA should be conducted. RIAs are now required to consider alternative non-regulatory options, assess the potential impact that proposed regulations might have on competition, small businesses, trade, environment, gender equality and other relevant factors, as well as likely distributional effects. Once a RIA is conducted, the government publishes a RIA report on a central website. Chile should ensure that the requirements and improvements brought forward by the new instructive are systematically implemented in practice by all ministries.

Stakeholder engagement is formally required in the development of certain laws, for example concerning indigenous people's rights and certain environmental issues, and securities and insurance for subordinate regulations. As of 2019, public consultations are also required for major regulatory proposals for which a high impact RIA is to be conducted. Chile makes voluntary guidelines on consultation mechanisms available to regulators and links to ministries' consultation portals are listed on a central website. In order to continue improving stakeholder engagement practices, Chile needs to ensure that these recent requirements are systematically implemented in practice, including involving stakeholders earlier in the decision-making process, and not only when there is already a draft regulation.

Presidential Instructive No. 4/2019 introduced new requirements for *ex post* evaluation and administrative simplification. Subordinate regulations for which a high impact RIA was conducted are now required to be evaluated four years after their enactment. In addition, each ministry publishes on their website a list of existing regulations for the public to provide comments and feedback for potential review.

The referred Presidential Instructive No. 3/2019 also requires policy makers to submit their RIAs to the Ministry General Secretariat of the Presidency (SEGPRES) for review. In addition, the Ministry of Economy, Development and Tourism can provide technical assistance to ministries when conducting their RIAs. Chile could benefit from extending the oversight of their regulatory management tools to stakeholder engagement and *ex post* evaluations, and from reinforcing its nascent oversight of RIA.

Indicators of Regulatory Policy and Governance (iREG): Chile, 2021



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 Chile).
Source: Indicators of Regulatory Policy and Governance Surveys 2017 and 2021, http://oe.cd/ireg.

Chile: Transparency throughout the policy cycle

Inform the public in advance that:	A public consultation is planned to take place	
	Regulatory impact assessment (RIA) is due to take place▲	
	Ex post evaluations are planned to take place	
Consult with stakeholders on:	Draft regulations	
	Evaluations of existing regulations	
Publish online:	Ongoing consultations*	
	Views of participants in the consultation process▲	
	RIAs	
	Evaluations of existing regulations▲	
Policy makers use:	Interactive website(s) to consult with stakeholders▲	
	Website(s) for the public to make recommendations on existing regulations▲	
Policy makers provide a public response to:	Consultation comments▲	
	Recommendations made in *ex post* evaluations■	

All/■Always/▲Yes
Major/■ Frequently
Some/■ Sometimes
Never/▲ No
* Publish on a single central government website.
Note: The data reflects Chile's practices regarding primary laws initiated by the executive.
Source: Indicators of Regulatory Policy and Governance Survey 2021, http://oe.cd/ireg.

Colombia

Overview and recent developments

In Colombia, the National Development Plan for 2018-2022, and the policy document CONPES 3816/2014 create the framework for the country's regulatory policy. Based on these and other instruments, regulatory impact assessment (RIA) is carried out mostly for technical regulations. The uptake is low for the rest of subordinate regulations. Colombia could make a systemic analysis of the barriers to adopt RIA, develop an implementation plan and execute it. Securing commitment at the highest political level will be instrumental.

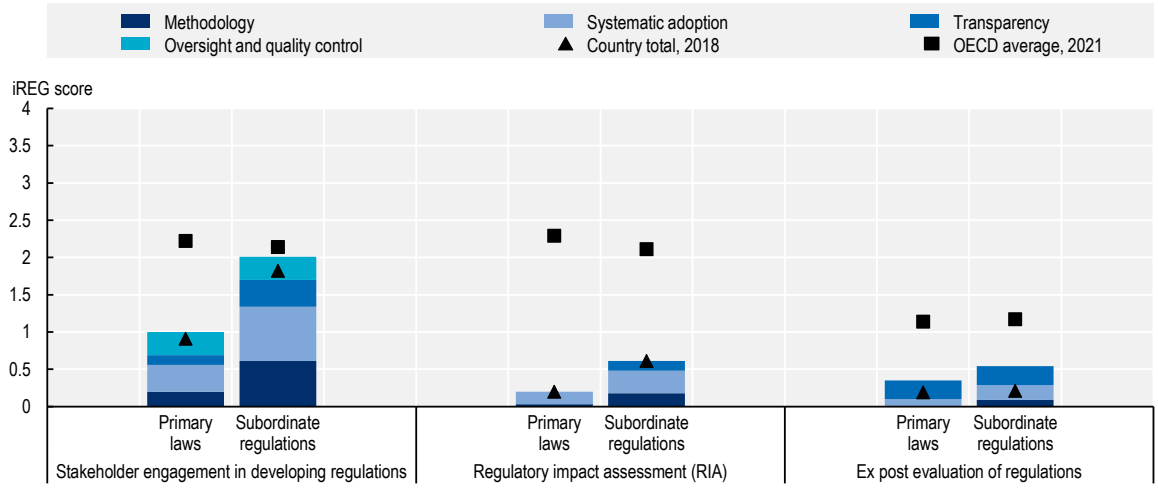
Regulators and line ministries are formally required to consult with stakeholders in the preparation of regulations. SUCOP is a digital platform that aims at centralising stakeholder engagement practices across all government entities, allowing the public to participate in the processes of consultation during the rule-making process. However, ministries still regularly use their own website to seek comments. Colombia could benefit from promoting the use of SUCOP.

Ex post evaluation is employed sporadically by the regulatory agencies in telecommunications, energy and water, and plans are on their way to use it with respect to technical regulations as outlined in Decree 1468 published in 2020.

Colombia's regulatory oversight consists of three main bodies. The National Planning Department (DNP), located at the centre of government, is responsible for systematic improvement and advocacy across the government, issuing guidance on regulatory management tools and ensuring co-ordination. The mandate of the Public Function Administrative Department (DAFP) includes identifying potential areas for red tape reduction. The Ministry of Trade, Industry and Commerce covers the development of technical regulation, overseeing public consultation and, since 2018, also *ex ante* evaluations in co-ordination with the DNP of these instruments.

Indicators presented on RIA and stakeholder engagement for primary laws only cover processes carried out by the executive, which initiates approx. 20% 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.

Indicators of Regulatory Policy and Governance (iREG): Colombia, 2021



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 (20% of all primary laws in Colombia).
Source: Indicators of Regulatory Policy and Governance Survey 2017 and 2021, http://oe.cd/ireg.

Colombia: Transparency throughout the policy cycle

Inform the public in advance that:	A public consultation is planned to take place	
	Regulatory impact assessment (RIA) is due to take place▲	
	Ex post evaluations are planned to take place	
Consult with stakeholders on:	Draft regulations	
	Evaluations of existing regulations	
Publish online:	Ongoing consultations*	
	Views of participants in the consultation process▲	
	RIAs	
	Evaluations of existing regulations▲	
Policy makers use:	Interactive website(s) to consult with stakeholders▲	
	Website(s) for the public to make recommendations on existing regulations▲	
Policy makers provide a public response to:	Consultation comments▲	
	Recommendations made in *ex post* evaluations■	

All/■Always/▲Yes
Major/■ Frequently
Some/■ Sometimes
Never/▲ No

* Publish on a single central government website.
Note: The data reflects Colombia's practices regarding subordinate regulations initiated by the executive, since in Colombia primary laws are rarely initiated by the executive.
Source: Indicators of Regulatory Policy and Governance Survey 2021, http://oe.cd/ireg.

Costa Rica

Overview and recent developments

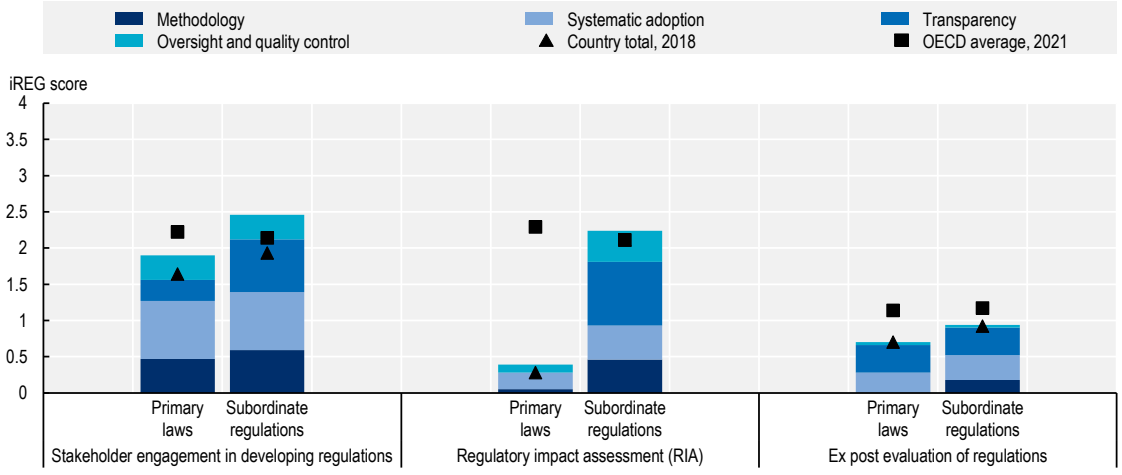
Regulatory policy in Costa Rica continues to focus on improving the business environment by reducing administrative burdens for citizens and business. This includes several strategies to intensify administrative simplification efforts, for instance streamlining the stock of government formalities.

Costa Rica has introduced several changes to expand stakeholder engagement in the development of regulations, such as forward planning and a more intensive use of the SICOPRE, a centralised webpage that makes regulatory impact assessments (RIAs) and public consultations available and allows for comments by the public, to which regulators respond. RIA is employed in the development of technical regulations. However, for the rest of the subordinate regulations, it is only required when the draft regulation includes the creation of government formalities. Building on the progress achieved in enhancing public consultation in rule making, Costa Rica should enlarge the use of RIA to all types of subordinate regulation. Pilot programmes on selected ministries could help identify key lessons in the implementation of a whole-of-government RIA system.

Two bodies within the Ministry of Economy, Industry and Trade are in charge of regulatory oversight functions in Costa Rica. The Better Regulation Unit is in charge of RIA quality control of technical regulations and administrative formalities, as well as of co-ordinating and promoting regulatory policy through the provision of training and advice. The Quality Unit oversees the development of technical regulation, including verification of compliance with RIA requirements. This unit performs stakeholder consultation and analysis of the technical regulation stock to identify reform needs.

Indicators presented on RIA and stakeholder engagement for primary laws only cover processes carried out by the executive, which initiates approx. 17% 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. There is no formal requirement in Costa Rica for conducting RIAs to inform the development of primary laws initiated by parliament.

Indicators of Regulatory Policy and Governance (iREG): Costa Rica, 2021



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 (17% of all primary laws in Costa Rica).
Source: Indicators of Regulatory Policy and Governance Survey 2017 and 2021, http://oe.cd/ireg.

Costa Rica: Transparency throughout the policy cycle

Inform the public in advance that:	A public consultation is planned to take place	
	Regulatory impact assessment (RIA) is due to take place▲	
	Ex post evaluations are planned to take place	
Consult with stakeholders on:	Draft regulations	
	Evaluations of existing regulations	
Publish online:	Ongoing consultations*	
	Views of participants in the consultation process▲	
	RIAs	
	Evaluations of existing regulations▲	
Policy makers use:	Interactive website(s) to consult with stakeholders▲	
	Website(s) for the public to make recommendations on existing regulations▲	
Policy makers provide a public response to:	Consultation comments▲	
	Recommendations made in *ex post* evaluations■	

All/■Always/▲Yes
Major/■ Frequently
Some/■ Sometimes
Never/▲ No
* Publish on a single central government website.
Note: The data reflects Costa Rica's practices regarding subordinate regulations initiated by the executive, since in Costa Rica primary laws are rarely initiated by the executive.
Source: Indicators of Regulatory Policy and Governance Survey 2021, http://oe.cd/ireg.

Czech Republic

Overview and recent developments

The Czech Republic has a well-developed regulatory impact assessment (RIA) 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 overview of impacts; 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.

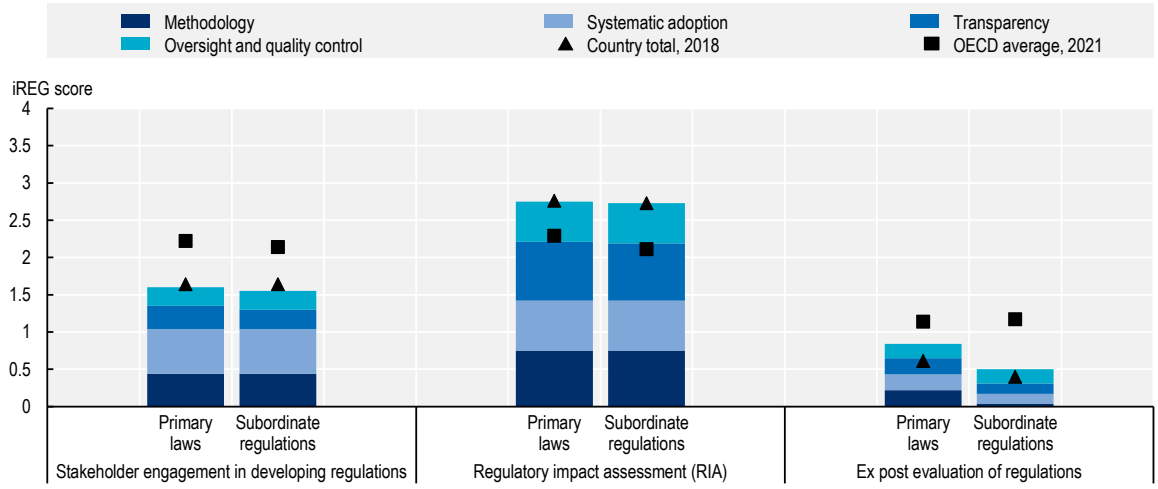
The Government Legislative Council is an advisory body to the government overseeing the quality of draft legislation before it is presented to the government. One of its working commissions, the RIA Board, evaluates the quality of RIAs and adherence to the procedures as defined in the mandatory RIA Guidelines, provides assistance to drafting authorities if requested, and issues opinions on whether draft legislation should undergo a full RIA. The RIA Unit of the Government Legislative Council section of the government co-ordinates the RIA process within central government, provides methodological assistance and issues guidance materials for the RIA process.

All legislative drafts submitted to the government are published on a government portal accessible to 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, stimulate stakeholders including the general public to contribute to consultations and be more proactive in engaging with stakeholders sufficiently early.

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 effectiveness and efficiency of existing regulations takes place usually on an *ad hoc* basis and is used rather rarely. The Czech Republic has published guidelines on *ex post* evaluation for officials, though they are still considered as voluntary but should be made more systematic in the future.

Indicators presented on RIA and stakeholder engagement for primary laws only cover processes carried out by the executive, which initiates approximately 45% of primary laws in Czech Republic. There is no requirement in the Czech Republic for conducting consultation or RIA to inform the development of primary laws initiated by parliament.

Indicators of Regulatory Policy and Governance (iREG): Czech Republic, 2021



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 (45% of all primary laws in the Czech Republic).
Source: Indicators of Regulatory Policy and Governance Surveys 2017 and 2021, http://oe.cd/ireg.

Czech Republic: Transparency throughout the policy cycle

Inform the public in advance that:	A public consultation is planned to take place	
	Regulatory impact assessment (RIA) is due to take place▲	■
	Ex post evaluations are planned to take place	
Consult with stakeholders on:	Draft regulations	■
	Evaluations of existing regulations	■
Publish online:	Ongoing consultations*	
	Views of participants in the consultation process▲	■
	RIAs	■
	Evaluations of existing regulations▲	■
Policy makers use:	Interactive website(s) to consult with stakeholders▲	
	Website(s) for the public to make recommendations on existing regulations▲	
Policy makers provide a public response to:	Consultation comments▲	■
	Recommendations made in *ex post* evaluations■	

■ All/■Always/▲Yes
■ Major/■ Frequently
■ Some/■ Sometimes
■ Never/▲ No

* Publish on a single central government website.
Note: The data reflects Czech Republic's practices regarding subordinate regulations initiated by the executive, since in Czech Republic primary laws are rarely initiated by the executive.
Source: Indicators of Regulatory Policy and Governance Survey 2021, http://oe.cd/ireg.

Denmark

Overview and recent developments

Regulatory reform has been an important feature of the Danish government agenda since the 1980s. Denmark has recently introduced significant institutional reforms to support the implementation of both the principles on agile (innovation-friendly) business legislation, aiming to support the ability for businesses to test, develop and apply new technologies and business models, as well as the principles on digital-ready legislation, aiming to ensure that legislation can be administered digitally. To ensure optimum results of the new institutional framework, role clarity and effective co-ordination between the distinct bodies will require attention.

The mandate of the Better Regulation Unit (former Team Effective Regulation) at the Danish Business Authority has been expanded. In addition to performing the quality control of RIAs of regulations creating significant burdens for businesses and providing guidance and training in the use of good regulatory management tools, this body is also in charge of overseeing compliance with the country's principles for agile (innovation-friendly) business regulation as well as the principles for implementation of business-oriented EU-regulation.

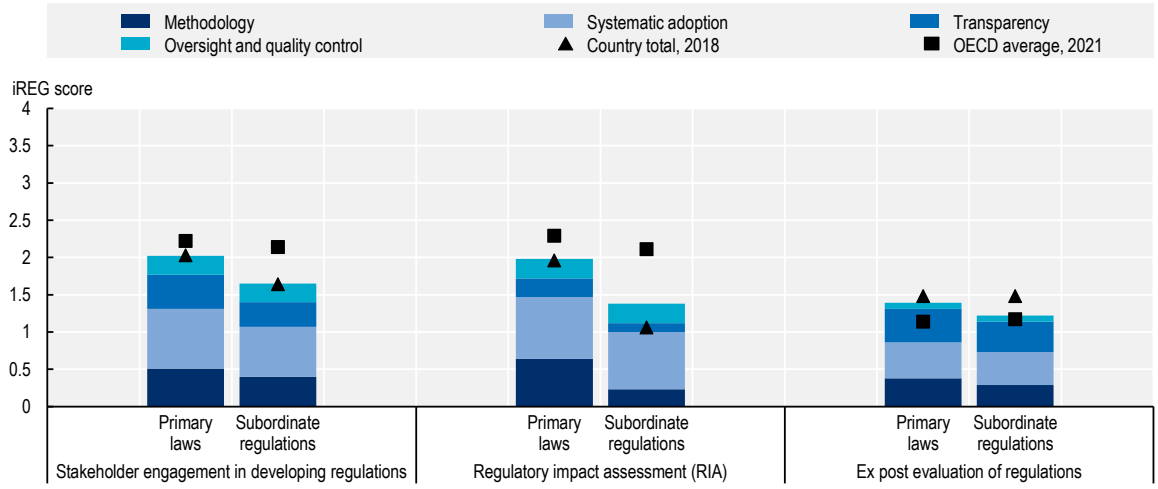
The Danish Business Regulation Forum (DBRF) was set up in 2019 by merging the Danish Business Forum for Better Regulation and the EU-Implementation Council. Served by a Secretariat in the Ministry of Industry, Business and Financial Affairs, it advises the government on the development and application of the methodology for RIA, and the principles of agile (innovation-friendly) business regulation. It also conducts in-depth reviews of regulations in different policy areas. Finally, the DBRF focuses on identifying simplification options in areas where digitisation and new technological trends will challenge the regulation, as well as business-oriented digital solutions.

The Secretariat for digital-ready legislation was set up within the Ministry of Finance in 2018. It receives draft legislative proposals six weeks before their publication for public consultation and issues recommendations regarding compliance with the seven principles of digital-ready legislation as well as to improve implementation impact assessments. According to Danish authorities, government ministries incorporate at least some of the secretariat's recommendations in the final bills presented before parliament in about 75% of cases.

Denmark systematically engages with stakeholders in the later stage of the regulatory process. Full RIAs are required to be carried out for both primary and subordinate regulations above certain thresholds. The government periodically reviews existing regulation with significant impacts and the DBRF is involved in reviewing existing regulations.

Transparency could be further strengthened by informing the public in advance that a public consultation or a RIA is due to take place. 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.

Indicators of Regulatory Policy and Governance (iREG): Denmark, 2021



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 2017 and 2021, http://oe.cd/ireg.

Denmark: Transparency throughout the policy cycle

Inform the public in advance that:	A public consultation is planned to take place	
	Regulatory impact assessment (RIA) is due to take place▲	
	Ex post evaluations are planned to take place	
Consult with stakeholders on:	Draft regulations	
	Evaluations of existing regulations	
Publish online:	Ongoing consultations*	
	Views of participants in the consultation process▲	
	RIAs	
	Evaluations of existing regulations▲	
Policy makers use:	Interactive website(s) to consult with stakeholders▲	
	Website(s) for the public to make recommendations on existing regulations▲	
Policy makers provide a public response to:	Consultation comments▲	
	Recommendations made in *ex post* evaluations■	

All/■Always/▲Yes
Major/■ Frequently
Some/■ Sometimes
Never/▲ No
* Publish on a single central government website.
Note: The data reflects Denmark's practices regarding primary laws initiated by the executive.
Source: Indicators of Regulatory Policy and Governance Survey 2021, http://oe.cd/ireg.

Estonia

Overview and recent developments

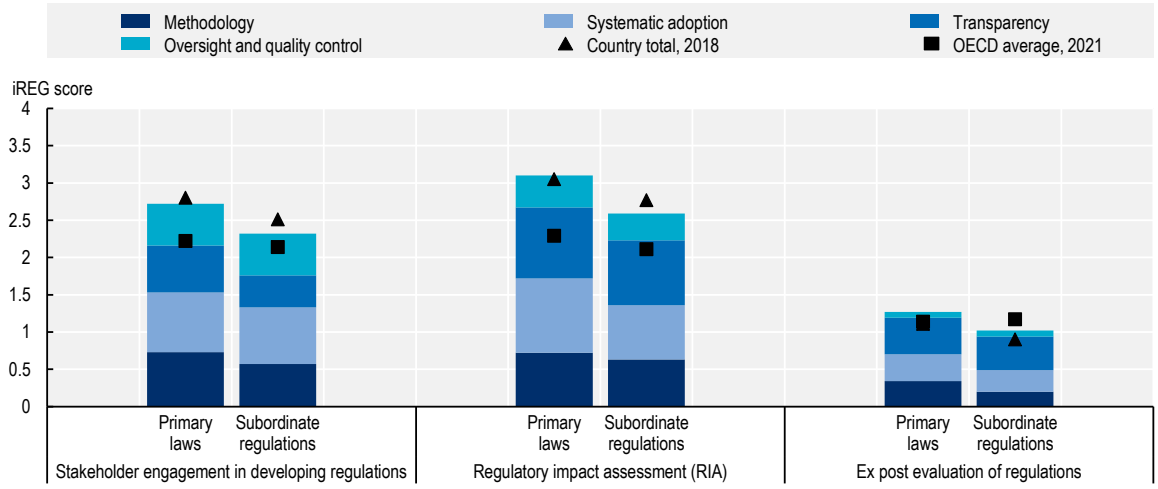
Estonia has not made any major changes to its regulatory framework since 2014. Preliminary regulatory impact assessments (RIAs) are prepared for all primary laws and selected subordinate regulations. Full RIAs tended to be conducted rarely, and while that remains the case, simplified RIAs are included in every explanatory letter of draft laws. The level of analysis contained within them has deepened over time.

The Legislative Quality Division within the Ministry of Justice reviews the quality of RIAs and can return them for revision if quality standards are not met. It 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 RIA and stakeholder engagement practices with formal requirements. The Division also issues RIA guidelines and scrutinises the legal quality of draft regulations. The Government Office of Estonia complements this work by co-ordinating stakeholder engagement in policy making across government. This includes issuing guidelines on stakeholder engagement, managing the country's e-consultation system and promoting the engagement co-ordinators' programme. The Government Office's EU Secretariat performs a co-ordination function regarding EU law and its transposition, and its Legal Departmenthas a role scrutinising the legislation.

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 RIAs available on a central portal. For public consultations, in addition to EIS, other channels are used to disseminate information such as ministries' websites, social media platforms, and general media. 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 has been mandatory for some regulations since 2012. The first evaluations were undertaken in 2018. In general, *ex post* evaluations take place between 3–5 years after the implementation of the regulation and have covered areas of competition, administrative burden, and regulatory overlap. More recently in-depth reviews have begun to be conducted in some policy areas. The publication of *ex post* evaluations remains at the discretion of the relevant minister. 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. The objective to increase the proportion of *ex post* evaluations is set out in the new strategy document Principles for Legislative Policy until 2030, adopted in November 2020.

Indicators of Regulatory Policy and Governance (iREG): Estonia, 2021



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 Estonia).
Source: Indicators of Regulatory Policy and Governance Surveys 2017 and 2021, http://oe.cd/ireg.

Estonia: Transparency throughout the policy cycle

Inform the public in advance that:	A public consultation is planned to take place	
	Regulatory impact assessment (RIA) is due to take place▲	
	Ex post evaluations are planned to take place	
Consult with stakeholders on:	Draft regulations	
	Evaluations of existing regulations	
Publish online:	Ongoing consultations*	
	Views of participants in the consultation process▲	
	RIAs	
	Evaluations of existing regulations▲	
Policy makers use:	Interactive website(s) to consult with stakeholders▲	
	Website(s) for the public to make recommendations on existing regulations▲	
Policy makers provide a public response to:	Consultation comments▲	
	Recommendations made in *ex post* evaluations■	

All/■Always/▲Yes
Major/■ Frequently
Some/■ Sometimes
Never/▲ No
* Publish on a single central government website.
Note: The data reflects Estonia's practices regarding primary laws initiated by the executive.
Source: Indicators of Regulatory Policy and Governance Survey 2021, http://oe.cd/ireg.

Finland

Overview and recent developments

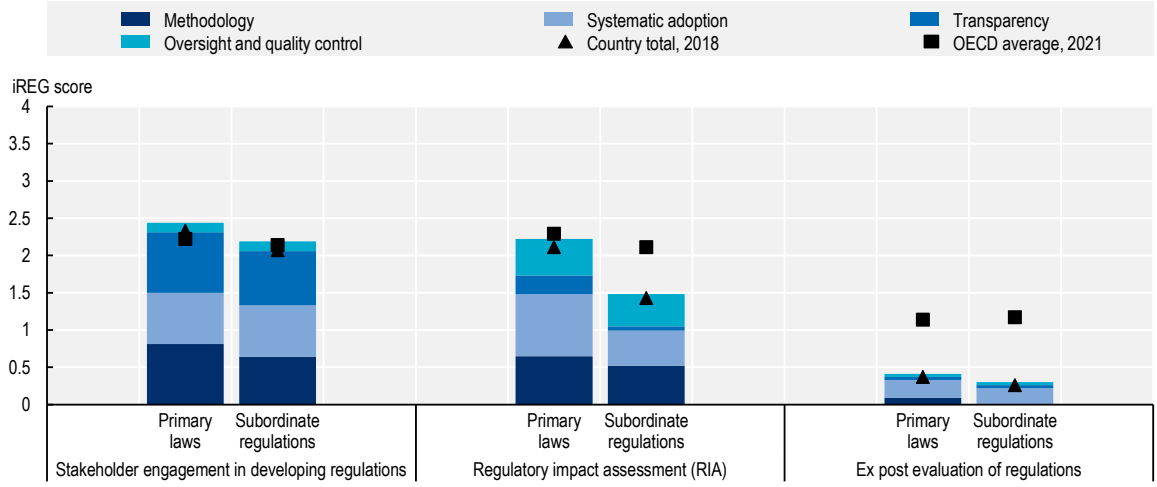
As part of its broader strategic objective of consolidating a well-functioning democracy, the current Government Programme in place since 2019 pledges to strengthen the role of Finland's regulatory oversight body, introduce government-level system for *ex post* assessments, and draw up a comprehensive action plan for Better Regulation. The government-wide instructions for drafting bills were renewed in 2019 to provide more and clearer information to rule-makers, and reforms on regulatory impact assessment (RIA) and *ex post* evaluations are underway.

RIA is formally required and conducted for all primary laws and for some subordinate regulations. A renewal of the Finnish RIA Guidelines was initiated in 2020, and new guidance is expected to be available in 2021-22. In 2019, a study by the Parliament's Audit Committee on the development of RIA was carried out. It included extensive consultations with stakeholders and parliamentary committees. While e*x post* evaluation of regulations is not mandatory across the government, the government has commissioned a research project on the current use of *ex post* evaluations within the government to gain a better overview on their scope and methods across regulatory authorities.

The Finnish Council of Regulatory Impact Analysis (FCRIA) is Finland's only regulatory oversight body (ROB). It is an arms-length body set up in 2015. The FCRIA reviews selected RIAs based on the criteria of 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 a mandate to review *ex post* assessments of legislation. In addition to the country's ROB, there is a government-wide co-operative working group for improving law drafting that aims at enhancing co-ordination across ministries and promoting the uptake of best practices. Exceptionally, in the context of COVID-19, oversight functions were partially shared with the Ministry of Justice as far as fundamental and human rights were concerned. 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.

Several 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 Governments Registry for Projects and Initiatives which was revamped in 2017 (http://valtioneuvosto.fi/hankkeet). The COVID-19 pandemic brought an increase in the number of consultations taking place via phone or internet, confirming the importance of these platforms.

Indicators of Regulatory Policy and Governance (iREG): Finland, 2021



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 2017 and 2021, http://oe.cd/ireg.

Finland: Transparency throughout the policy cycle

Inform the public in advance that:	A public consultation is planned to take place	
	Regulatory impact assessment (RIA) is due to take place▲	
	Ex post evaluations are planned to take place	
Consult with stakeholders on:	Draft regulations	
	Evaluations of existing regulations	
Publish online:	Ongoing consultations*	
	Views of participants in the consultation process▲	
	RIAs	
	Evaluations of existing regulations▲	
Policy makers use:	Interactive website(s) to consult with stakeholders▲	
	Website(s) for the public to make recommendations on existing regulations▲	
Policy makers provide a public response to:	Consultation comments▲	
	Recommendations made in *ex post* evaluations■	

All/■Always/▲Yes
Major/■ Frequently
Some/■ Sometimes
Never/▲ No
* Publish on a single central government website.
Note: The data reflects Finland's practices regarding primary laws initiated by the executive.
Source: Indicators of Regulatory Policy and Governance Survey 2021, http://oe.cd/ireg.

France

Overview and recent developments

Since 2018, France has taken some steps to improve its regulatory policy system. In June 2019, the Prime Minister of France issued an instruction introducing the requirement for each legislative proposal to be accompanied by five impact indicators that must be included in regulatory impact assessment (RIA). The objective is to enable decision makers to measure the expected impacts of the policy in order to promote *ex post* evaluation. A first assessment of the "one-in, two-out" offsetting approach introduced in 2017 to limit standards imposing new constraints that are not set by law was carried out by the Council of Ministers in July 2019. The government reported net savings from this initiative (20 million euros in 2020 and 63 million euros in July 2021). Since 2020, a communication is usually made after each Council of Ministers to report progress on priority reforms and a barometer of policies results has been made publicly available.

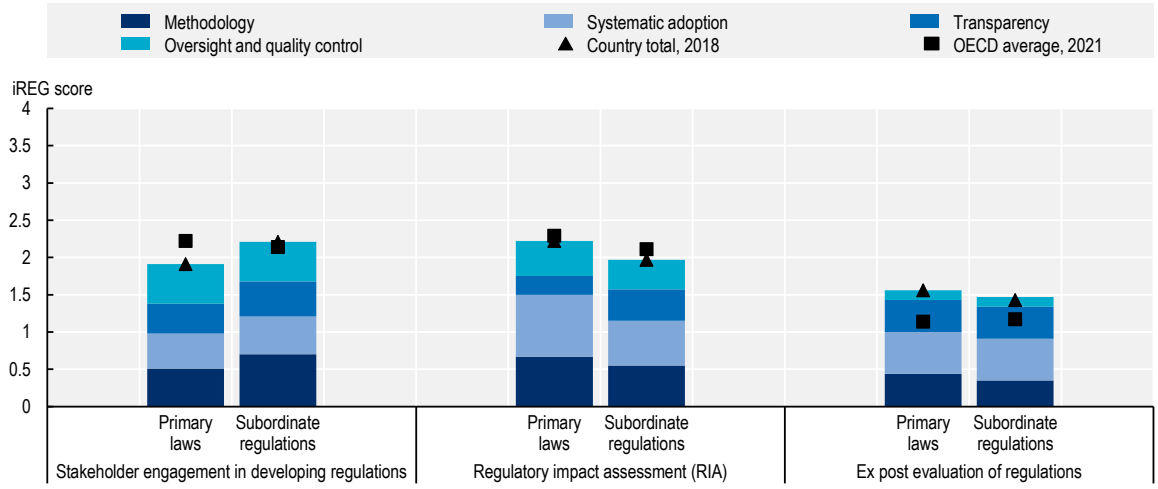
RIAs are required for all primary laws and major subordinate regulations. All RIAs prepared for primary laws or subordinate regulations are available online on a centralised platform, easily accessible by the public. *Ex post* evaluation takes place on an ad hoc basis, mainly for primary regulations, and is fragmented across a range of institutions.

While France still does not require public and stakeholder engagement for the development of new regulations, except for environmental regulations, informal consultations and the consultation of selected groups are frequent. For example, France has led a wide public consultation in 2019-2020 to conceive the Climate and Resilience Bill for which a panel of French citizens was directly involved in the preparation of the law. Public consultations conducted over the internet is used for both early-stage and late-stage stakeholder engagement on non-environmental issues, but not on a systematic basis.

Under the authority of the Prime Minister, the *Secrétariat Général du Gouvernement* (SGG) ensures compliance with procedures (including for RIA and stakeholder engagement), inter-ministerial co-ordination, and liaison with the *Conseil d'État* and the Parliament. It guarantees the minimum quality of RIA, provides guidance, 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 its control of legal quality and stakeholder engagement) and downstream (as the administrative judge of last resort).

France could benefit from broadening its Better Regulation agenda to adapt and improve the quality of its regulatory system. France could for example open consultations more systematically to the general public to fully reap the benefits of stakeholder engagement. France could also improve its *ex post* review system by systemising the practice of evaluation.

Indicators of Regulatory Policy and Governance (iREG): France, 2021



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 (72% of all primary laws in France).
Source: Indicators of Regulatory Policy and Governance Surveys 2017 and 2021, http://oe.cd/ireg.

France: Transparency throughout the policy cycle

Inform the public in advance that:	A public consultation is planned to take place	
	Regulatory impact assessment (RIA) is due to take place▲	
	Ex post evaluations are planned to take place	
Consult with stakeholders on:	Draft regulations	
	Evaluations of existing regulations	
Publish online:	Ongoing consultations*	
	Views of participants in the consultation process▲	
	RIAs	
	Evaluations of existing regulations▲	
Policy makers use:	Interactive website(s) to consult with stakeholders▲	
	Website(s) for the public to make recommendations on existing regulations▲	
Policy makers provide a public response to:	Consultation comments▲	
	Recommendations made in *ex post* evaluations■	

All/■Always/▲Yes
Major/■ Frequently
Some/■ Sometimes
Never/▲ No
* Publish on a single central government website.
Note: The data reflects France's practices regarding primary laws initiated by the executive.
Source: Indicators of Regulatory Policy and Governance Survey 2021, http://oe.cd/ireg.

Germany

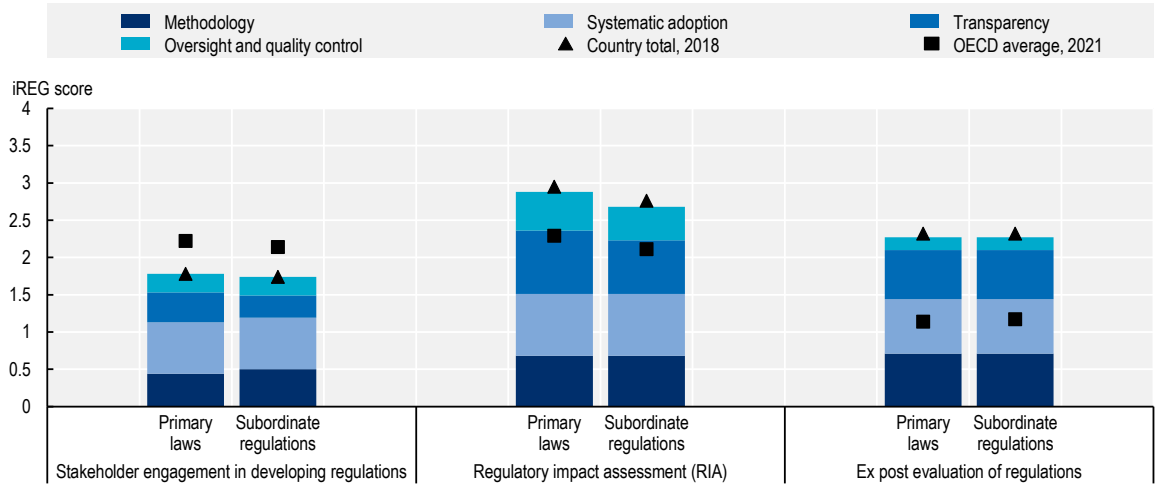
Overview and recent developments

Germany has made some improvements to its regulatory policy system over the past years. Since 2018, Germany makes all ongoing public consultations accessible through one central government website building on the Federal Government's commitment to promote transparency in the legislative process. Regulatory impact assessments, which are mandatory for all laws and regulation, require since 2020 an assessment of the impacts on the equality of living conditions to promote citizen well-being in policy development. The system for assessing impacts of draft legislation *ex ante* is being complemented by recent efforts to improve the *ex post* evaluation of legislation. In 2018, the Bureaucracy Reduction and Better Regulation work programme introduced the requirement to publish all evaluations reports online. In November 2019, the Federal Statistical Office established an evaluation support unit for ministries by decision of the State Secretaries Committee on Bureaucracy Reduction.

The Better Regulation Unit (BRU) 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. Its mandate has been broadened to include the evaluation and further strengthening of the *ex ante* procedure used by the Federal Government to assess, at an early stage, the compliance costs for Germany of planned EU legislation. The National Regulatory Control Council (NKR) operates at arm's length from government. It reviews the quality of all RIAs, provides advice during all stages of rulemaking, and has responsibilities in administrative simplification and burden reduction. In November 2019, the German government introduced additional requirements for independent quality control of *ex post* evaluations which the NKR is offering to perform. The Parliamentary Advisory Council on Sustainable Development, in turn, reviews the sustainability checks contained in all RIAs. It examines all legislative proposals and related assessments (for both primary laws and subordinate regulations) of the Federal Government.

Since 2017, all draft regulations are available on ministries' websites. In addition, all ongoing consultations are accessible through one central government website since 2018 due to the Federal Government's commitment to promote transparency in the legislative process. Germany also recently made use of green papers, inviting interested parties to submit comments on the government's draft strategy for moor protection. 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 public, release draft impact assessments for public consultation and systematically publish responses to consultation comments online.

Indicators of Regulatory Policy and Governance (iREG): Germany, 2021



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 Germany).
Source: Indicators of Regulatory Policy and Governance Surveys 2017 and 2021, http://oe.cd/ireg.

Germany: Transparency throughout the policy cycle

Inform the public in advance that:	A public consultation is planned to take place	
	Regulatory impact assessment (RIA) is due to take place▲	
	Ex post evaluations are planned to take place	
Consult with stakeholders on:	Draft regulations	
	Evaluations of existing regulations	
Publish online:	Ongoing consultations*	
	Views of participants in the consultation process▲	
	RIAs	
	Evaluations of existing regulations▲	
Policy makers use:	Interactive website(s) to consult with stakeholders▲	
	Website(s) for the public to make recommendations on existing regulations▲	
Policy makers provide a public response to:	Consultation comments▲	
	Recommendations made in *ex post* evaluations■	

All/■Always/▲Yes
Major/■ Frequently
Some/■ Sometimes
Never/▲ No
* Publish on a single central government website.
Note: The data reflects Germany's practices regarding primary laws initiated by the executive.
Source: Indicators of Regulatory Policy and Governance Survey 2021, http://oe.cd/ireg.

Greece

Overview and recent developments

Greece has introduced Law 4622 in 2019, which further embeds regulatory management tools into the rule-making process for primary laws. A list of laws to be prepared or modified is now published in advance and the guidance on regulatory impact assessment (RIA) for primary laws has been updated and now includes guidelines on how to conduct stakeholder engagement. A range of mechanisms were introduced to assist officials in the development of *ex post* evaluations which is not yet done systematically in Greece. The relevant guidebook and template is currently being piloted and is planned to be published in 2021. *Ex post* evaluations are planned to be conducted by a new body established by Law 4622, the Special Secretariat for Monitoring and Evaluation of the Government Programme.

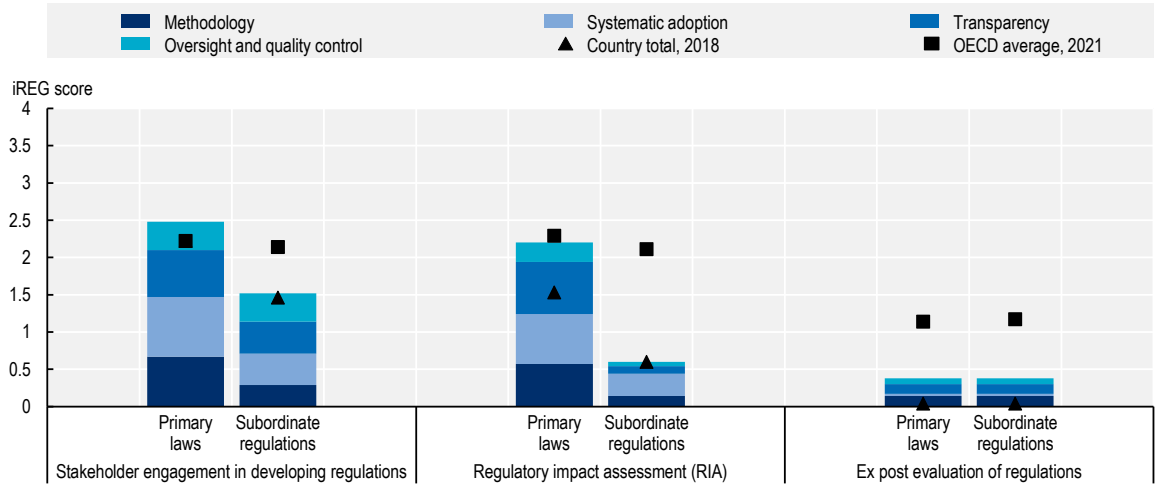
RIA is obligatory for all primary laws and for subordinate regulations of major economic or social importance. RIAs for primary laws must now be signed-off by the competent minister before being submitted to the Greek parliament. Based on Law 4622/2019, all analysis shall be proportionate to the significance or expected impacts of the regulation, additional categories of regulatory costs shall be quantified, and regulators shall assess the regulatory impacts on a larger range of factors, including gender equality and the UN's Sustainable Development Goals.

While public consultations are required for all primary laws, there is no requirement for subordinate regulation. In practice, draft primary laws are frequently posted on the consultation portal (www.opengov.gr) and only a few subordinate regulations are subject to public consultation. All consultation on primary laws should be accompanied by a RIA, although this is not always the case in practice.

In December 2020, a presidential decree amended the competences of the Better Regulation Office (BRO) of the Secretariat General of Legal and Parliamentary Affairs (Presidency of the Government). The BRO is no longer in charge of RIA scrutiny or the drafting of an annual report on better regulation but retains a range of responsibilities such as: promoting the "implementation of better regulation principles and tools in the exercise of governmental powers", including appropriate institutional co-operation; initiating and monitoring public consultation procedures in co-operation with the competent law-making committee and the ministry that has the legislative initiative; and preparing an annual report on Regulatory Production and Evaluation (in co-operation with the General Secretariat for Coordination). The presidential decree merged the two Directorates of Legislative Procedure under the Secretariat General of Legal and Parliamentary Affairs. According to the new legal requirements, the resulting directorate plays an important co-ordination role on regulatory policy and is responsible for ensuring the incorporation of any remarks made by the Committee on Evaluation of the Quality of Legislative Procedure, which is an advisory body responsible for scrutinising RIAs and associated draft bills and ensuring the legal quality of government regulations.

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. Applying the existing regulatory management tools to subordinate regulations would also enhance regulatory quality in Greece.

Indicators of Regulatory Policy and Governance (iREG): Greece, 2021



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 2017 and 2021, http://oe.cd/ireg.

Greece: Transparency throughout the policy cycle

Inform the public in advance that:	A public consultation is planned to take place	
	Regulatory impact assessment (RIA) is due to take place▲	
	Ex post evaluations are planned to take place	
Consult with stakeholders on:	Draft regulations	
	Evaluations of existing regulations	
Publish online:	Ongoing consultations*	
	Views of participants in the consultation process▲	
	RIAs	
	Evaluations of existing regulations▲	
Policy makers use:	Interactive website(s) to consult with stakeholders▲	
	Website(s) for the public to make recommendations on existing regulations▲	
Policy makers provide a public response to:	Consultation comments▲	
	Recommendations made in *ex post* evaluations■	

All/■Always/▲Yes
Major/■ Frequently
Some/■ Sometimes
Never/▲ No
* Publish on a single central government website.
Note: The data reflects Greece's practices regarding primary laws initiated by the executive.
Source: Indicators of Regulatory Policy and Governance Survey 2021, http://oe.cd/ireg.

Hungary

Overview and recent developments

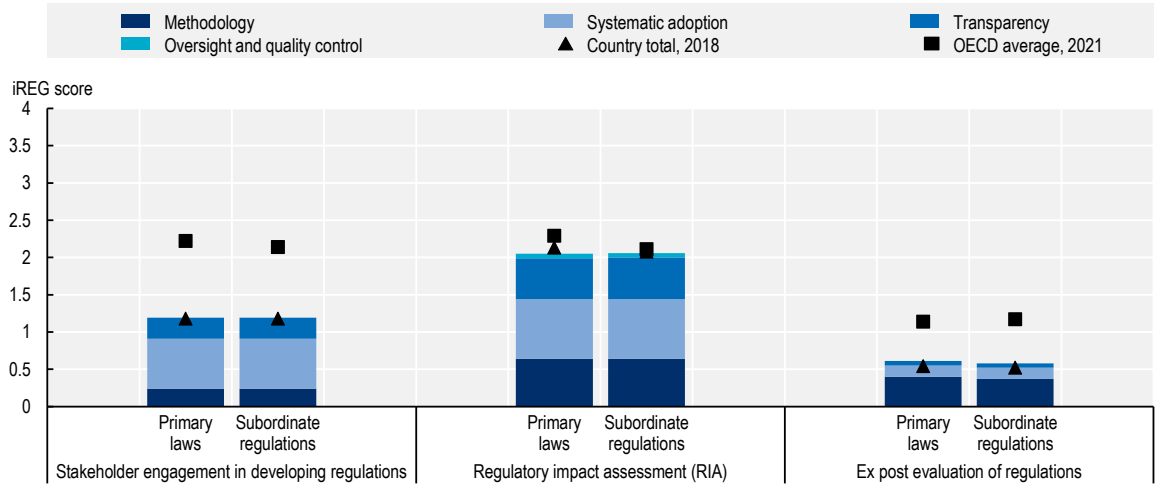
All primary and subordinate legislations are required to undergo a RIA. However, RIAs are not consulted on nor made publically available. In March 2019, Hungary updated an act from 2010 on law-making to establish new obligations for law-makers. It requires law-makers to consider the results of impact assessments when developing new laws so that they only propose laws that are necessary for achieving regulatory objectives. In addition, it requires that where possible, legislations are drafted in a way that result in simpler, faster and less costly procedures, reduce the number of legal obligations and administrative burdens, and prevent over-regulation and regulatory overlap.

Draft legislation with its statement of purpose is required to be made accessible to the public with the possibility to provide comments by email. However, consultation is not required in the early phases of the design of legislation. The general public can express their recommendations to modify or provide feedback on existing regulations by sending an email to the corresponding ministry. While *ex post* evaluation is required, the OECD has received no evidence that this is done in practice.

The Government 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. The Government Office can also propose reforms or modifications related to the RIA and *ex post* evaluation framework. It prepares an annual report on RIA based on feedback from each ministry, which is not publicly available. 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. There is no oversight body in charge of quality improvements on RIAs or *ex post* reviews. Hungary would benefit from technical quality support for RIAs, *ex post* evaluations and consultations.

Overall Hungary would gain from improving transparency throughout the policy cycle. Stakeholders should be consulted at different stages of the policy cycle and relevant supporting legislative documents and impact assessments should be made available online to a wider public. Furthermore, the public should be informed in advance when consultations, RIA and *ex post* evaluations will take place. This would allow to further improve the efficiency and effectiveness of public policies and promote the accountability of the system.

Indicators of Regulatory Policy and Governance (iREG): Hungary, 2021



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 Hungary).
Source: Indicators of Regulatory Policy and Governance Surveys 2017 and 2021, http://oe.cd/ireg.

Hungary: Transparency throughout the policy cycle

Inform the public in advance that:	A public consultation is planned to take place	
	Regulatory impact assessment (RIA) is due to take place▲	
	Ex post evaluations are planned to take place	
Consult with stakeholders on:	Draft regulations	■
	Evaluations of existing regulations	
Publish online:	Ongoing consultations*	■
	Views of participants in the consultation process▲	
	RIAs	
	Evaluations of existing regulations▲	
Policy makers use:	Interactive website(s) to consult with stakeholders▲	
	Website(s) for the public to make recommendations on existing regulations▲	
Policy makers provide a public response to:	Consultation comments▲	
	Recommendations made in *ex post* evaluations■	

■ All/■Always/▲Yes
■ Major/■ Frequently
■ Some/■ Sometimes
■ Never/▲ No
* Publish on a single central government website.
Note: The data reflects Hungary's practices regarding primary laws initiated by the executive.
Source: Indicators of Regulatory Policy and Governance Survey 2021, http://oe.cd/ireg.

Iceland

Overview and recent developments

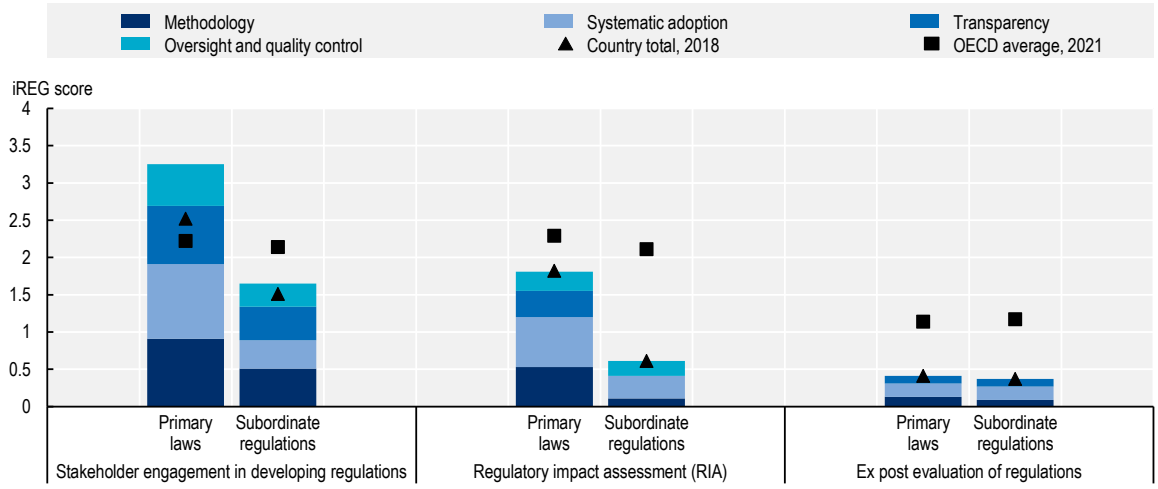
Iceland has significantly improved its consultation system over the past years. It launched a new centralised consultation website for all ministries in February 2018. The website provides users with an overview of the lifecycle of the regulatory change, including access to the preliminary RIA and draft legislative text, details of the final regulatory decision, and a summary explaining how the comments impacted the proposal. The government encourages the participation of citizens through social media for some consultations; also, the public can subscribe to website and e-mail alerts for all consultations. It is generally noted in explanatory notes to draft laws which stakeholders were notified. Internal guidance developed by the Prime Minister's Office has been updated in 2020 to give further step-by-step instructions on aspects of consultation. These reforms seem to have facilitated easier consultation and improved transparency, with online consultation now being carried out for all primary laws at both early- and late-stages; however, the reforms have not been extended to subordinate regulations.

Iceland's RIA and *ex post* evaluation system have remained largely static since 2018. RIA is required for all primary laws as well as some subordinate regulations, and are posted on the consultation platform. A wide range of impacts are considered, though only impacts on the budget and public sector are required for all primary laws and major subordinate regulations. Other impacts, such as on competition, trade, small businesses, specific regions or groups, gender equality, environment, and other socio-economic variables, are only considered for some primary laws and not for subordinate regulations. *Ex post* evaluation continues to be non-mandatory, but is used periodically for some primary laws and subordinate regulations.

The core responsibility for regulatory oversight lies with the Department of Legislative Affairs (DLA) within the Prime Minister's Office, which is a cabinet-level body responsible for improving and advocating for good regulatory practices across government. It also oversees stakeholder engagement, evaluates regulatory policy, provides guidance and training for the use of regulatory management tools, and scrutinises 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, specifically concerning impacts on public finances and the economy, and developing guidance materials for RIA. The DPF also reviews RIAs on gender equality.

In continuing to iterate its reforms, Iceland may want to improve its regulatory management system for subordinate regulations as they have focused mostly on reforms to primary laws. A starting point could be to extend some of the positive changes made for consultations more systematically to subordinate regulations, where relevant. Attention could also shift to improving aspects of *ex ante* and *ex post* evaluation, including extending RIA requirements to all subordinate regulations and including more systematically a diverse range of impact categories, as well as making more systemic use of *ex post* reviews.

Indicators of Regulatory Policy and Governance (iREG): Iceland, 2021



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 (81% of all primary laws in Iceland).
Source: Indicators of Regulatory Policy and Governance Surveys 2017 and 2021, http://oe.cd/ireg.

Iceland: Transparency throughout the policy cycle

Inform the public in advance that:	A public consultation is planned to take place	
	Regulatory impact assessment (RIA) is due to take place▲	■
	Ex post evaluations are planned to take place	
Consult with stakeholders on:	Draft regulations	■
	Evaluations of existing regulations	■
Publish online:	Ongoing consultations*	■
	Views of participants in the consultation process▲	■
	RIAs	■
	Evaluations of existing regulations▲	
Policy makers use:	Interactive website(s) to consult with stakeholders▲	■
	Website(s) for the public to make recommendations on existing regulations▲	
Policy makers provide a public response to:	Consultation comments▲	■
	Recommendations made in *ex post* evaluations■	

■ All/■Always/▲Yes
■ Major/■ Frequently
■ Some/■ Sometimes
■ Never/▲ No

* Publish on a single central government website.
Note: The data reflects Iceland's practices regarding primary laws initiated by the executive.
Source: Indicators of Regulatory Policy and Governance Survey 2021, http://oe.cd/ireg.

Ireland

Overview and recent developments

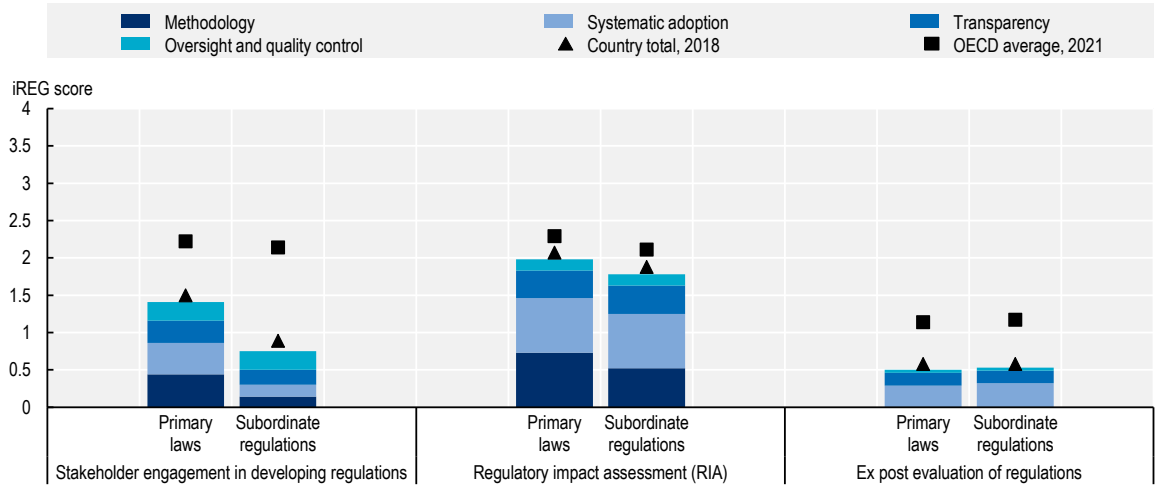
Ireland is developing, and currently trialling as a prototype, a single central government website on which some of the ongoing consultations are published. Following the Open Government Partnership National Action Plan 2014-2016 and 2016-2018, Ireland had committed to improving consultation by public bodies with citizens, civil society and others. Despite this recent improvement, Ireland's consultation practices do not yet operate on a systematic basis across government departments. As Ireland develops the tools to conduct more transparent and open stakeholder engagement, public consultation could be applied more systematically to a broader range of draft regulations, particularly for subordinate regulations.

The Department of the Taoiseach is responsible for the effectiveness of regulators and, together with the Office of the Attorney General, for ensuring the transparency and quality of legislation. It is also responsible for setting the overall government multi-sectoral policy in Ireland. The Department of the Taoiseach aims to reduce regulatory burdens, promote regulatory quality, encourage a business-friendly regulatory environment, and ensure inter-departmental co-ordination in regulatory development. The Department of Public Expenditure and Reform is responsible for RIA guidance and the provision of training on RIA, *ex post* evaluation, and stakeholder engagement. The implementation of regulatory management tools and oversight of sectoral economic regulators remains the responsibility of the relevant department(s).

Standing orders from Parliament state that the minister responsible for implementing a law must provide an 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 has introduced sunsetting clauses in some of the subordinate regulations relating to the COVID-19 pandemic. Irish policy makers could however be more systematically required to conduct *ex post* evaluations of existing regulations, to assess whether they actually function in practice.

Ireland conducts mandatory RIA for major primary laws and subordinate regulations. In order to more effectively monitor and assess the quality of RIA implementation, Ireland should consider establishing a central oversight body to perform core oversight functions, such as reviewing the quality of RIA and of other regulatory management tools.

Indicators of Regulatory Policy and Governance (iREG): Ireland, 2021



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 Ireland).
Source: Indicators of Regulatory Policy and Governance Surveys 2017 and 2021, http://oe.cd/ireg.

Ireland: Transparency throughout the policy cycle

Inform the public in advance that:	A public consultation is planned to take place	
	Regulatory impact assessment (RIA) is due to take place▲	
	Ex post evaluations are planned to take place	
Consult with stakeholders on:	Draft regulations	
	Evaluations of existing regulations	
Publish online:	Ongoing consultations*	
	Views of participants in the consultation process▲	
	RIAs	
	Evaluations of existing regulations▲	
Policy makers use:	Interactive website(s) to consult with stakeholders▲	
	Website(s) for the public to make recommendations on existing regulations▲	
Policy makers provide a public response to:	Consultation comments▲	
	Recommendations made in *ex post* evaluations■	

All/■Always/▲Yes
Major/■ Frequently
Some/■ Sometimes
Never/▲ No
* Publish on a single central government website.
Note: The data reflects Ireland's practices regarding primary laws initiated by the executive.
Source: Indicators of Regulatory Policy and Governance Survey 2021, http://oe.cd/ireg.

Israel

Overview and recent developments

Israel made significant progress in improving its regulatory policy over the last years. The Government Resolutions No. 2588 of 22 April 2017 and No. 4398 of 23 December 2018 solidified the use of regulatory impact assessment in the regulation-making process, strengthened public consultation practices and provided the basis for more efficient regulatory oversight. The focus of regulatory review, both *ex ante* and *ex post*, is still mostly on reducing regulatory burdens, although evaluation of benefits is slowly being introduced. All draft primary laws and subordinate regulations are now systematically published on a single central governmental website for public consultation.

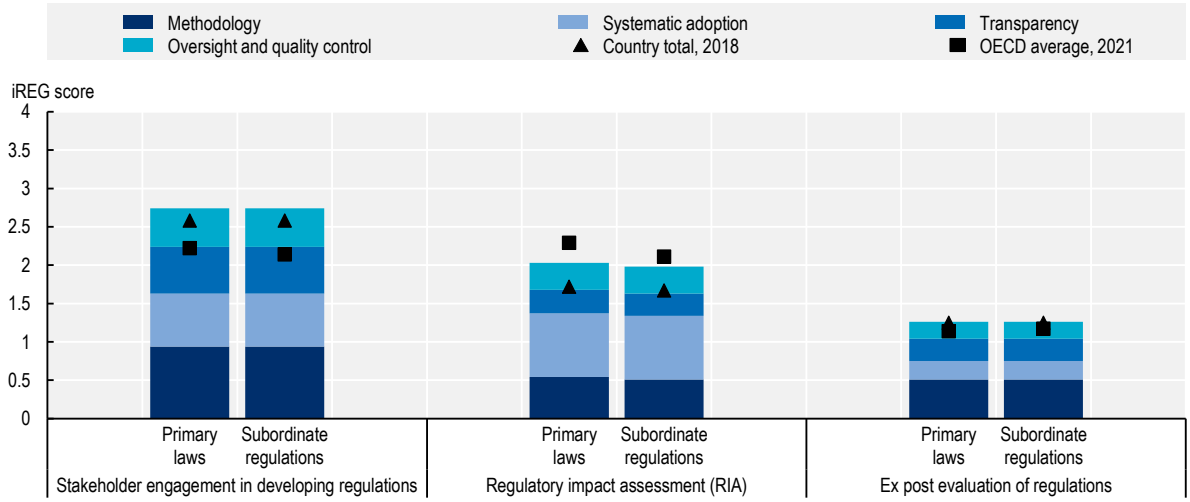
Israel's Better Regulation Department (BRD) was established within the Prime Minister's Office in 2014. Resolution No. 4398 has modified the mandate of the BRD, which is now entrusted with overseeing RIAs as well as with implementing a programme to train regulators and legal advisors. However, there is no obligation to consult BRD before submitting legislative drafts to the government. The Ministry of Justice, in turn, oversees the legal quality of regulations and the entire legislative process within government. A network of "Better Regulation leaders" in all line ministries helps the respective ministries to implement Resolution No. 4398. These leaders also provide an important linkage between the BRD and the line ministries.

As of 2014, conducting RIA is obligatory for all primary laws and subordinate regulations initiated by the government. This obligation does not concern the laws initiated by members of the Knesset. In 2018, Resolution No. 4398 has altered the definition of the term "regulation" to include any binding behavioural code applying to any economic or social conduct. Despite this obligation, a significant number of ministerial orders still do not contain any impact assessment while still causing significant regulatory costs. Israel would benefit from better targeting RIA efforts in order to allocate most analytical resources where they deliver greatest added value.

Resolution No. 2118 of 22 October 2014 set an obligation for each ministry to formulate a five-year plan to reduce regulatory burdens in its area of competence. However, the measures included in the programme have not been fully implemented yet as a significant stock of existing regulations must still be treated and reviewed and the programme is perceived as less successful as originally expected.

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. Regulatory oversight, such as an obligatory review of all RIAs by BRD issuing publically available opinions, should be strengthened. In addition, the training programme on regulatory management tools organised by the BRD could be extended in order to widen its outreach and to engage with a larger range of regulatory actors within government.

Indicators of Regulatory Policy and Governance (iREG): Israel, 2021



Note: 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 (63% of all primary laws in Israel).
Source: Indicators of Regulatory Policy and Governance Surveys 2017 and 2021, http://oe.cd/ireg.

Israel: Transparency throughout the policy cycle

Inform the public in advance that:	A public consultation is planned to take place	
	Regulatory impact assessment (RIA) is due to take place▲	■
	Ex post evaluations are planned to take place	
Consult with stakeholders on:	Draft regulations	■
	Evaluations of existing regulations	■
Publish online:	Ongoing consultations*	■
	Views of participants in the consultation process▲	■
	RIAs	■
	Evaluations of existing regulations▲	
Policy makers use:	Interactive website(s) to consult with stakeholders▲	■
	Website(s) for the public to make recommendations on existing regulations▲	■
Policy makers provide a public response to:	Consultation comments▲	
	Recommendations made in *ex post* evaluations■	

■ All/■ Always/▲ Yes
■ Major/■ Frequently
■ Some/■ Sometimes
■ Never/▲ No
* Publish on a single central government website.
Note: The data reflects Israel's practices regarding primary laws initiated by the executive.
Source: Indicators of Regulatory Policy and Governance Survey 2021, http://oe.cd/ireg.

Italy

Overview and recent developments

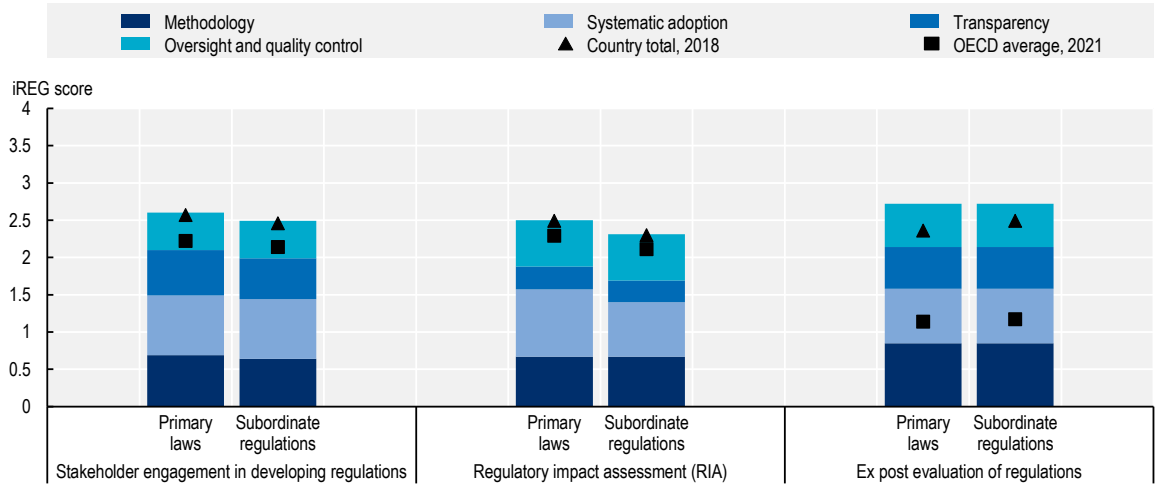
Ex post evaluations have become more commonplace across a wider range of policy areas, and the public is now informed in advance of e*x post* evaluations that will take place through two-year plans posted on the website of each ministry. Italy also introduced new non-binding guidance on *ex post* evaluation and RIA in 2018.

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. 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.

DAGL reviews the quality of RIAs and *ex post* evaluations. It can issue a negative opinion to the State Secretary to the Presidency if RIA quality 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 and *ex post* evaluation included in the two-year ministries plans, 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 (*Nucleo AIR*) supports the DAGL in reviewing *ex ante* and *ex post* evaluations. This unit is composed of external experts serving a four-year term, selected through an open and competitive process. The Consultative Chamber on draft normative acts of the Council of State checks the quality of RIA and stakeholder engagement practices and evaluates regulatory policy.

In practice, however, several problems persist in implementation. Many RIAs lack sufficient quantification not only in terms of impacts, but also regarding the number of people affected. While RIAs are published, they are difficult to find by the general public. The challenge ahead is therefore to “connect the dots” to develop a culture of evidence-based user-centric policy making: Besides improving their quality, RIAs should be systematically made available when a regulation is proposed on a single webpage. The website could also link to the websites of independent regulators where their RIAs are posted. Most importantly, the planning and preparation of regulations needs to be genuinely informed by RIA, rather than it being an “add-on” for regulations that have fundamentally been already decided upon. While initial steps have been taken to plan *ex post* evaluations when preparing RIAs for major legislation, it is important to ensure that *ex post* evaluations are actually always taking place as planned in practice, and that results are effectively used for improving existing regulations. Consultation processes have been improved by the creation of a single online access point. They 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) – and feedback from consultations should be more systematically responded to, and taken into account.

Indicators of Regulatory Policy and Governance (iREG): Italy, 2021



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 (54% of all primary laws in Italy).
Source: Indicators of Regulatory Policy and Governance Surveys 2017 and 2021, http://oe.cd/ireg.

Italy: Transparency throughout the policy cycle

Inform the public in advance that:	A public consultation is planned to take place	
	Regulatory impact assessment (RIA) is due to take place▲	
	Ex post evaluations are planned to take place	
Consult with stakeholders on:	Draft regulations	
	Evaluations of existing regulations	
Publish online:	Ongoing consultations*	
	Views of participants in the consultation process▲	
	RIAs	
	Evaluations of existing regulations▲	
Policy makers use:	Interactive website(s) to consult with stakeholders▲	
	Website(s) for the public to make recommendations on existing regulations▲	
Policy makers provide a public response to:	Consultation comments▲	
	Recommendations made in *ex post* evaluations■	

All/■Always/▲Yes
Major/■ Frequently
Some/■ Sometimes
Never/▲ No
* Publish on a single central government website.
Note: The data reflects Italy's practices regarding primary laws initiated by the executive.
Source: Indicators of Regulatory Policy and Governance Survey 2021, http://oe.cd/ireg.

Japan

Overview and recent developments

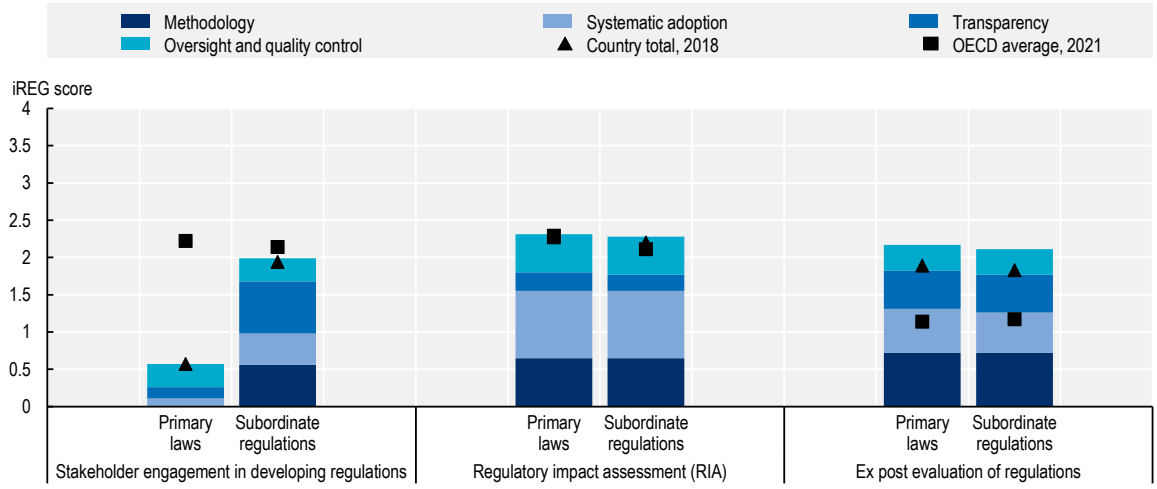
Japan has made notable efforts to improve its regulatory environment. In 2017, the government stressed its commitment to regulatory reform by introducing a Basic Program on Reducing Administrative Burden. The programme is linked to Japan's Revitalization Strategy (2016) and aims to introduce new frameworks, principles, and mechanisms for regulatory and institutional reform, with the view of achieving the programme's intended targets and objectives by 2019. The programme was reviewed by the Subcommittee for Administrative Burden Reduction in 2017, which assessed its impacts and set a revised goal of reducing costs on businesses by at least 20% by 2020, and the government reported more than a 25% reduction was achieved in March of the year. Japan has also revised its Implementation Guidelines for Policy Evaluation of Regulations in 2017, updating the 2007 guidelines. This further elaborates on the information and criteria for quantifying and qualifying impacts and costs, including the various techniques and processes that ministries can adopt under specific circumstances. Moreover, it specifies what is subject to RIA, introducing a qualitative threshold to determine whether RIA was undertaken.

The number of *ex post* evaluations has increased for both primary laws and subordinate regulations since 2017. The 2017 guidelines also clearly define the necessity of conducting reviews within five years unless otherwise legally stipulated, with reviews automatically triggered if a RIA was conducted. The review then uses the original RIA as the baseline to determine whether expected impacts materialised. The linking of *ex ante* and *ex post* assessments also provides the opportunity to better engage with stakeholders, though stakeholders are only sometimes consulted for *ex post* evaluations. Japan also now allows stakeholders to submit comments for some consultations on subordinate regulations electronically.

Japan's regulatory policy includes two important bodies. One is the Council for Promotion of Regulatory Reform, which is an advisory board to the Prime Minister set up in the Cabinet Office. The functions are: 1) to investigate regulatory issues needed for structural reform, and 2) to submit a recommendation to the Prime Minister. The other important body is the Administrative Evaluation Bureau of the Ministry of Internal Affairs and Communications is responsible for planning, managing, and scrutinizing RIAs and *ex post* evaluations as well as for establishing guidelines and platforms for these.

An interactive website is available for the public to access relevant documents, such as impact assessments, and provide comments on draft subordinate regulations. Japan also has other methods such as the utilisation of Councils to gather opinions of stakeholders. 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.

Indicators of Regulatory Policy and Governance (iREG): Japan, 2021



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 Japan).
Source: Indicators of Regulatory Policy and Governance Surveys 2017 and 2021, http://oe.cd/ireg.

Japan: Transparency throughout the policy cycle

Inform the public in advance that:	A public consultation is planned to take place	
	Regulatory impact assessment (RIA) is due to take place▲	
	Ex post evaluations are planned to take place	■
Consult with stakeholders on:	Draft regulations	
	Evaluations of existing regulations	■
Publish online:	Ongoing consultations*	
	Views of participants in the consultation process▲	
	RIAs	■
	Evaluations of existing regulations▲	■
Policy makers use:	Interactive website(s) to consult with stakeholders▲	■
	Website(s) for the public to make recommendations on existing regulations▲	■
Policy makers provide a public response to:	Consultation comments▲	
	Recommendations made in *ex post* evaluations■	

■ All/■Always/▲Yes
■ Major/■ Frequently
■ Some/■ Sometimes
■ Never/▲ No

* Publish on a single central government website.
Note: The data reflects Japan's practices regarding primary laws initiated by the executive.
Source: Indicators of Regulatory Policy and Governance Survey 2021, http://oe.cd/ireg.

Korea

Overview and recent developments

Korea has incorporated several changes in its regulatory policy system over the last years. For RIA, this includes a 2018 reform requiring analysis to be proportionate to the significance of the regulation, and requiring alternative regulatory options to be assessed for all subordinate regulations. New RIA guidelines in 2018 allow for more systematic assessment and implementation, which were followed by impact reporting and guidance on RIA for SMEs in 2020.

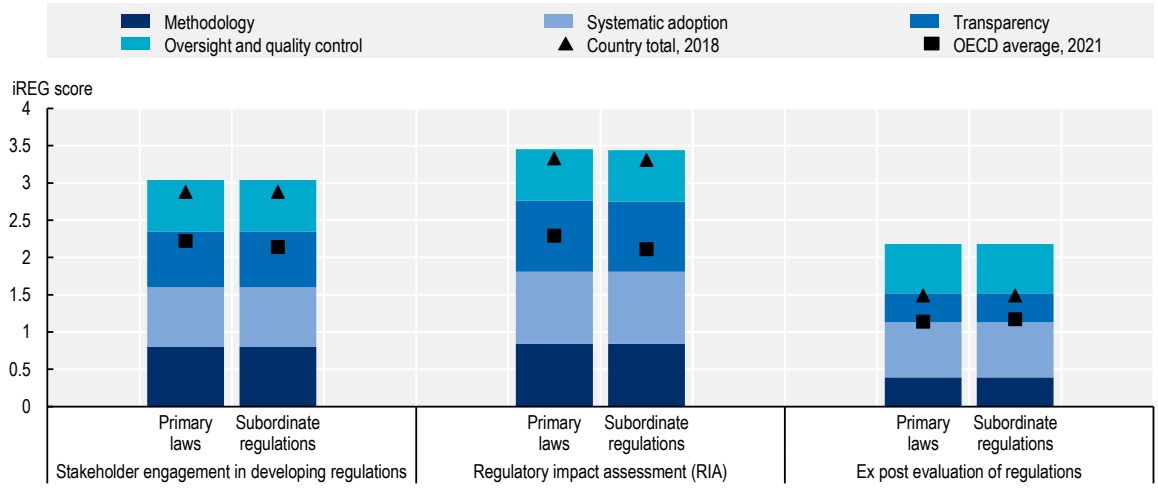
Consultations are conducted for all regulations initiated by the executive, and recent efforts have aimed to increase the transparency of consultation processes. The e-Legislation Centre and Regulatory Information Portal now provide notification of upcoming consultations and enable online participation for all consultations, in parallel with email, public meetings and through the post. While consultation on draft texts are widespread, early-stage consultation to identify different policy options could be strengthened. Korea continues to use e-consultations to receive advice on regulations, including the petition system "Regulatory Reform *Sinmungo*" that alerts the government to unnecessary burdens on business and citizens.

Ex post evaluation is mandatory for all regulations developed by the executive and central ministries, which are required to outline the intended evaluation plan as part of each RIA. Packaged reviews of *ex post* evaluations are now subject to quality control. Reviews have been undertaken looking at administrative burdens, compliance costs, and reducing regulatory difficulties in new industries, and a 2018 reform required agencies to reduce burdens on SMEs.

Regulatory oversight is conducted by the Regulatory Reform Committee (RRC), which is co-chaired by the Prime Minister and a representative from the non-government sector and which reviews all regulatory proposals from central administrative agencies. The Office for Government Policy Coordination, through the Regulatory Reform Office, acts as the RRC's secretariat, playing an oversight and steering role across central agencies. In 2018-19, a series of legal updates expanded RRC's mandate to include reductions in the regulatory burdens on SMEs, regulatory sandboxes, public engagement in regulatory reform, and administrative procedures and instruments for regulatory innovation. The Office for Government Policy Coordination conducts an annual evaluation of its own units which involves various performance indicators, such as the level of satisfaction with the improvement of public procurement regulations, the level of regulatory improvement and the level of compliance with RRC recommendations. Two research centres, the Korea Development Institute and the Korea Institute of Public Administration, support cost-benefit analysis, provide guidance, training, and conduct evaluations of regulatory policy.

Indicators presented on RIA and stakeholder engagement for primary laws only cover processes carried out by the executive, which initiates approximately 10% 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 regulatory quality in Korea, there should be regulatory quality check mechanisms put in place for regulations initiated by the National Assembly.

Indicators of Regulatory Policy and Governance (iREG): Korea, 2021



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 (10% of all primary laws in Korea).
Source: Indicators of Regulatory Policy and Governance Surveys 2017 and 2021, http://oe.cd/ireg.

Korea: Transparency throughout the policy cycle

Inform the public in advance that:	A public consultation is planned to take place	
	Regulatory impact assessment (RIA) is due to take place▲	
	Ex post evaluations are planned to take place	
Consult with stakeholders on:	Draft regulations	
	Evaluations of existing regulations	
Publish online:	Ongoing consultations*	
	Views of participants in the consultation process▲	
	RIAs	
	Evaluations of existing regulations▲	
Policy makers use:	Interactive website(s) to consult with stakeholders▲	
	Website(s) for the public to make recommendations on existing regulations▲	
Policy makers provide a public response to:	Consultation comments▲	
	Recommendations made in *ex post* evaluations■	

All/■Always/▲Yes
Major/■ Frequently
Some/■ Sometimes
Never/▲ No

* Publish on a single central government website.
Note: The data reflects Korea's practices regarding subordinate regulations initiated by the executive, since in Korea primary laws are rarely initiated by the executive.
Source: Indicators of Regulatory Policy and Governance Survey 2021, http://oe.cd/ireg.

Latvia

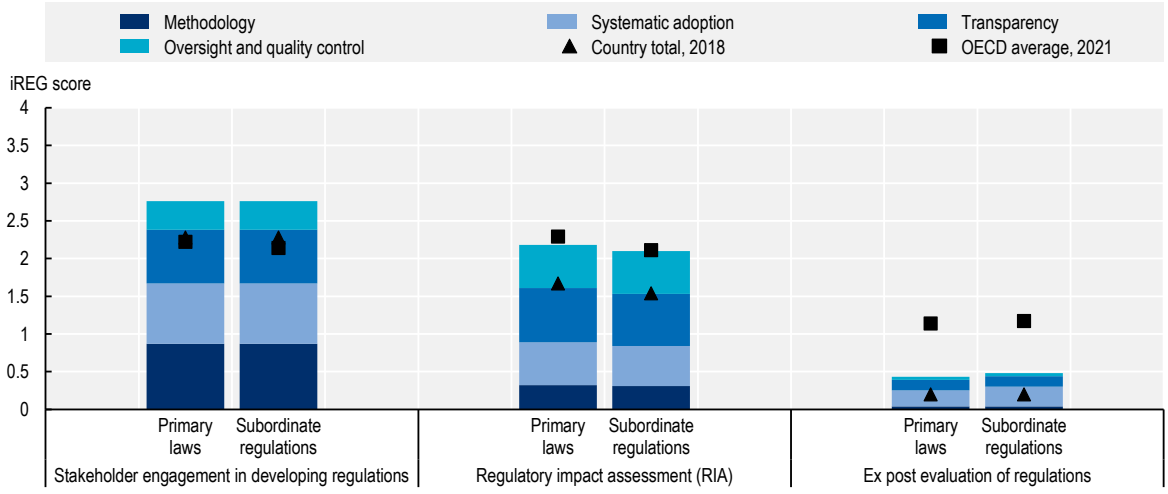
Overview and recent developments

Latvia has recently made several substantive reforms building on its existing regulatory policy framework. 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 mainly financial, budgetary, and administrative costs, and broader environmental and social costs. Policy makers now have the benefit of guidance material to assist in the preparation of RIAs including in the identification of the baseline, various options, and cost-benefit analysis. Consideration should now be given to improving the quantification of impacts of draft legislation and policy documents, as well as enhancing capacities to conduct cost-benefit analysis.

There is a structured and systematic process for consulting with social and civil partners. Public consultations are now systematically conducted at a late stage of policy development and stakeholders benefit from having a broader range of supporting material to help focus their input in policy proposals. While early stage consultation initiatives exist for planning documents, the next step will be to institutionalise this more broadly. Reviews of regulatory stock are mostly focussed on administrative burdens. While there is no explicit programme on *ex post* evaluations, they are now required for some subordinate regulations and an evaluation of all policy documents conforming to the SDGs was recently conducted.

The main responsibilities for co-ordinating regulatory policy and promoting regulatory quality are divided among the Ministry of Justice and the State Chancellery. The Ministry of Justice issues opinions regarding draft legal acts and draft development planning documents drawn up by other institutions and provides methodological assistance in the development of draft laws and regulations including regular training of state administration personnel at the State Administration School. 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 assessment of the Ministry of Justice and the State Chancellery is binding for other ministries, which may be requested to revise their proposals accordingly. The Chancellery also co-ordinates the development and application of uniform rules of regulatory drafting including the impact assessment guidelines. In 2018, its mandate was expanded to include, among other functions, quality control of *ex post* evaluations and systematic evaluation of regulatory policy.

Indicators of Regulatory Policy and Governance (iREG): Latvia, 2021



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 (69% of all primary laws in Latvia).
Source: Indicators of Regulatory Policy and Governance Survey 2017 and 2021, http://oe.cd/ireg.

Latvia: Transparency throughout the policy cycle

Inform the public in advance that:	A public consultation is planned to take place	
	Regulatory impact assessment (RIA) is due to take place ▲	
	Ex post evaluations are planned to take place	
Consult with stakeholders on:	Draft regulations	
	Evaluations of existing regulations	
Publish online:	Ongoing consultations*	
	Views of participants in the consultation process ▲	
	RIAs	
	Evaluations of existing regulations ▲	
Policy makers use:	Interactive website(s) to consult with stakeholders ▲	
	Website(s) for the public to make recommendations on existing regulations ▲	
Policy makers provide a public response to:	Consultation comments ▲	
	Recommendations made in *ex post* evaluations ■	

All/■ Always/▲ Yes
Major/■ Frequently
Some/■ Sometimes
Never/▲ No
* Publish on a single central government website.
Note: The data reflects Latvia's practices regarding primary laws initiated by the executive.
Source: Indicators of Regulatory Policy and Governance Survey 2021, 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. A major part of the Lithuanian government's efforts still focuses on administrative burden reduction, mainly for businesses. There are some general requirements to conduct monitoring and *ex post* reviews of existing primary laws, and the government has strengthened the regulatory oversight function and transparency related to *ex post* evaluations in 2020, although efforts remain in order to improve the effectiveness of the *ex post* evaluation framework. For example the Office of Government could be mandated to co-ordinate regulatory evaluations across government, involving all relevant institutions, and allocating appropriate resources.

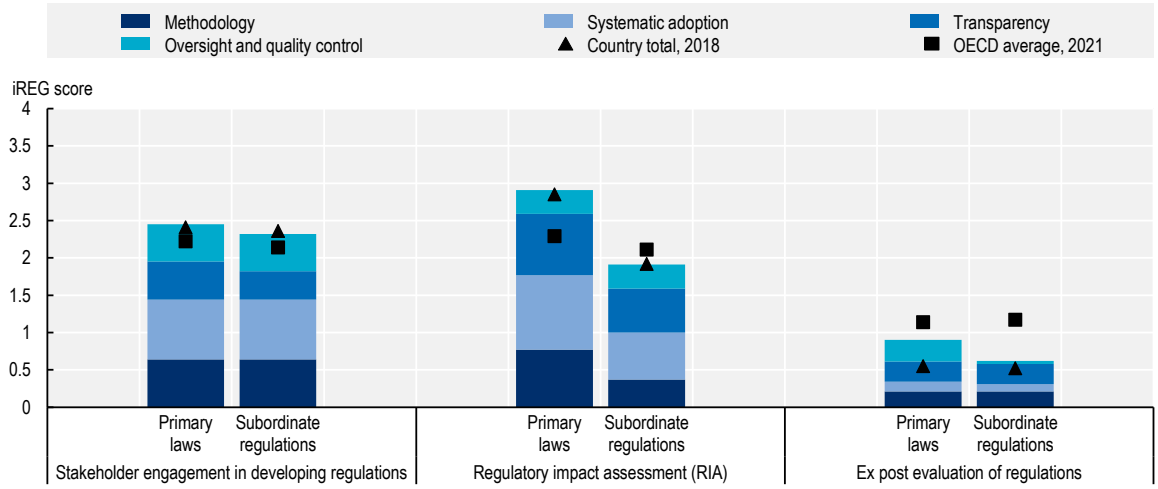
While impacts are required to be assessed for all primary laws, regulatory impact assessment (RIA) remains a largely formal exercise to justify choices already made, rarely based on data, and is more embedded into regulatory decision-making procedure for primary laws than for subordinate regulations. The RIA processes in Lithuania should be improved, with a special focus on starting early in the policy development in order to inform the choice of policy instruments and on better quantification of regulatory impacts. Lithuania could develop a clear data governance framework for evidence-informed policy making, as well as simplify access to administrative data for analytical purposes by public institutions.

Consultation is systematically required once a regulation is drafted, but it does not frequently take place before a decision to regulate is made. Lithuania has continued developing its stakeholder engagement and consultation methodology, particularly with the development of written guidance on how to conduct stakeholder engagement in 2019.

The institutional responsibility for co-ordinating regulatory policy and promoting regulatory quality lies primarily with the Government Office, which organises and supervises the law-making process when draft laws are initiated by the executive and which is in charge of preparing the annual legislative programme. The two main bodies with this location are the Strategic Competences Group, which is responsible for promoting better regulation, and the Government Strategic Analysis Centre – involved in RIA quality control, consultation and assistance to ministries in conducting RIA. The Better Regulation Policy Division of the Company Law and Business Environment Improvement Department, within the Ministry of Economy and Innovation, 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 Justice was mandated for the co-ordination of *ex post* evaluation but there remains scope for strengthening the oversight functions related to *ex post* evaluation.

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 from a whole-of-government perspective in an integrated strategic plan that includes identified objectives and a clear communication strategy.

Indicators of Regulatory Policy and Governance (iREG): Lithuania, 2021



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 (70% of all primary laws in Lithuania).
Source: Indicators of Regulatory Policy and Governance Survey 2017 and 2021, http://oe.cd/ireg.

Lithuania: Transparency throughout the policy cycle

Inform the public in advance that:	A public consultation is planned to take place	
	Regulatory impact assessment (RIA) is due to take place▲	
	Ex post evaluations are planned to take place	
Consult with stakeholders on:	Draft regulations	
	Evaluations of existing regulations	
Publish online:	Ongoing consultations*	
	Views of participants in the consultation process▲	
	RIAs	
	Evaluations of existing regulations▲	
Policy makers use:	Interactive website(s) to consult with stakeholders▲	
	Website(s) for the public to make recommendations on existing regulations▲	
Policy makers provide a public response to:	Consultation comments▲	
	Recommendations made in *ex post* evaluations■	

All/■Always/▲Yes
Major/■ Frequently
Some/■ Sometimes
Never/▲ No
* Publish on a single central government website.
Note: The data reflects Lithuania's practices regarding primary laws initiated by the executive.
Source: Indicators of Regulatory Policy and Governance Survey 2021, http://oe.cd/ireg.

Luxembourg

Overview and recent developments

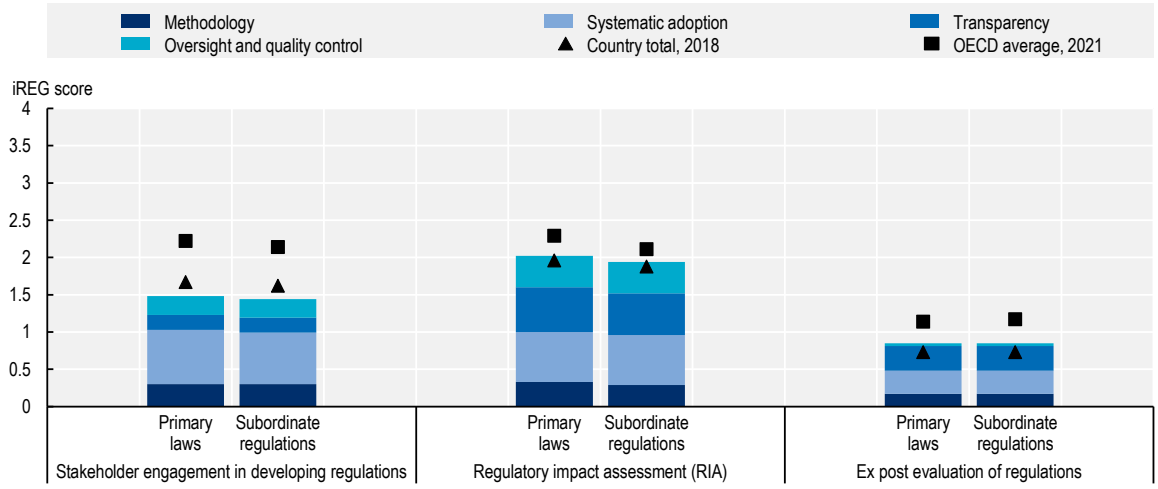
While there have been no major reforms since 2018 regarding regulatory management tools, Luxembourg recently made a website available where citizens and business can share their ideas on how to improve public service and how to simplify existing administrative processes (www.vosidees.lu). Luxembourg also recently developed a website where citizens can make public petitions for changes on existing regulations (www.petitiounen.lu). Once a petition reaches 4 500 signatures, there is a live broadcasted public debate with the parliament and the competent minister to which the petitioner is invited. However, stakeholder engagement for developing both primary laws and subordinate regulations is limited to formal consultation with professional groups such as the Chamber of Commerce and the Chamber of civil servants and public employees. An important step for improving Luxembourg's regulatory-making process would be to make stakeholder engagement open to the general public by facilitating avenues for the public to provide feedback on proposed regulatory drafts.

Even though *ex post* evaluations have been undertaken in Luxembourg, 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.

In Luxembourg, RIA is undertaken for all regulations in the form of a checklist mainly focussing on administrative burdens and enforcement. In order to enhance the usefulness of RIA, the analysis included in the impact assessments could be extended to other types of costs, impacts and benefits of regulations. While Luxembourg currently refers to the European Commission best practice instead of providing its 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.

In 2018, the competences of Luxembourg's main regulatory oversight body were transferred from the Ministry of the Civil Service and Administrative Reform to the Ministry of Digitalisation. These competences notably relate to quality control of stakeholder engagement, RIA, and *ex post* evaluations. However, the oversight body only provides advice and guidance to ministries and has no gatekeeper role. It is also responsible for a range of other oversight functions including the evaluation of regulatory policy, identifying areas where regulation can be made more effective, and co-ordination on regulatory policy.

Indicators of Regulatory Policy and Governance (iREG): Luxembourg, 2021



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 Luxembourg).
Source: Indicators of Regulatory Policy and Governance Surveys 2017 and 2021, http://oe.cd/ireg.

Luxembourg: Transparency throughout the policy cycle

Inform the public in advance that:	A public consultation is planned to take place	
	Regulatory impact assessment (RIA) is due to take place▲	
	Ex post evaluations are planned to take place	
Consult with stakeholders on:	Draft regulations	
	Evaluations of existing regulations	
Publish online:	Ongoing consultations*	
	Views of participants in the consultation process▲	
	RIAs	
	Evaluations of existing regulations▲	
Policy makers use:	Interactive website(s) to consult with stakeholders▲	
	Website(s) for the public to make recommendations on existing regulations▲	
Policy makers provide a public response to:	Consultation comments▲	
	Recommendations made in *ex post* evaluations■	

All/■Always/▲Yes
Major/■ Frequently
Some/■ Sometimes
Never/▲ No
* Publish on a single central government website.
Note: The data reflects Luxembourg's practices regarding primary laws initiated by the executive.
Source: Indicators of Regulatory Policy and Governance Survey 2021, http://oe.cd/ireg.

Mexico

Overview and recent developments

In Mexico, the General Law of Better Regulation enacted in 2018 modernised the regulatory policy in the country. It updated the former oversight body by creating the National Commission for Better Regulation (CONAMER). It added provisions to strengthen the mandatory use of RIA and stakeholder engagement, and established new provisions to carry out *ex post* assessment of regulations that generate compliance costs.

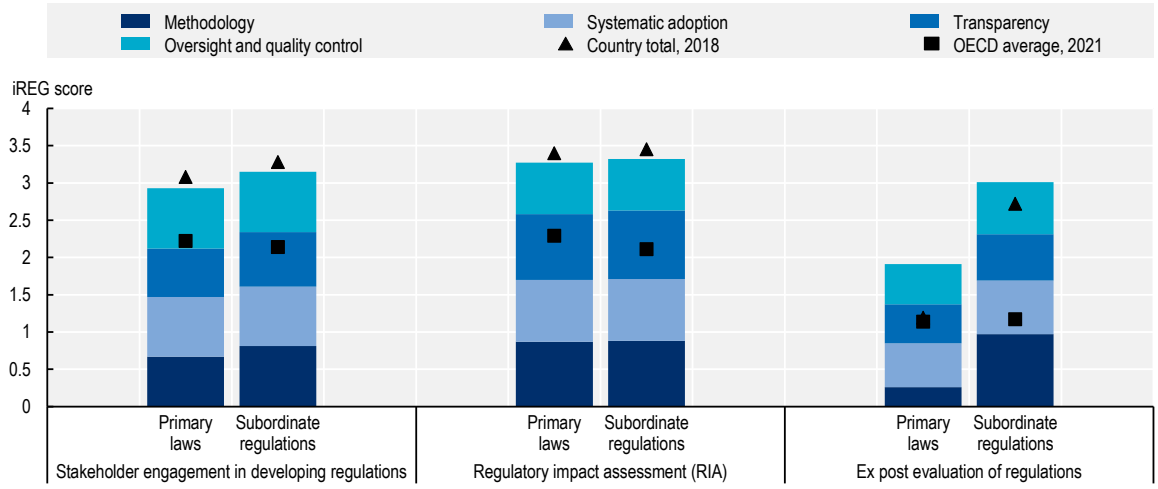
The practice of RIA in Mexico encompasses the use of thresholds tests to perform analyses proportional to the expected impact of the regulation, and specialised assessments such as effects on competition, risk management, trade, and consumer's rights, amongst others. Stakeholder engagement is employed routinely in several of the regulatory management tools, notably in later stages of the RIA process, and in *ex post* assessment exercises. Mexico could promote the use of early stage consultation in rule making.

In order to enhance the contribution of RIA and stakeholder engagement to regulatory quality and wellbeing, Mexico could perform more sophisticated, and to the extent possible, more independent assessments of their implementation and effectiveness. The results of these exercises may provide insights to also boost the use of *ex post* assessment tools.

CONAMER has technical and operational autonomy, but remains hierarchically subordinated to the Ministry of Economy. CONAMER's attributions and mandate include advice and support to implement regulatory management tools, as well as the scrutiny of RIAs and other better regulation obligations by regulators and line ministries. The General Bureau of Standards of the Ministry of Economy has the responsibility of supervising the development of technical regulations, including the consideration of international standards and practices. The draft technical regulations must then follow the general RIA process overseen by CONAMER.

Indicators presented on RIA and stakeholder engagement for primary laws only cover processes carried out by the executive, which initiates approximately 6% 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.

Indicators of Regulatory Policy and Governance (iREG): Mexico, 2021



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 (6% of all primary laws in Mexico).
Source: Indicators of Regulatory Policy and Governance Surveys 2017 and 2021, http://oe.cd/ireg.

Mexico: Transparency throughout the policy cycle

Inform the public in advance that:	A public consultation is planned to take place	
	Regulatory impact assessment (RIA) is due to take place▲	
	Ex post evaluations are planned to take place	
Consult with stakeholders on:	Draft regulations	
	Evaluations of existing regulations	
Publish online:	Ongoing consultations*	
	Views of participants in the consultation process▲	
	RIAs	
	Evaluations of existing regulations▲	
Policy makers use:	Interactive website(s) to consult with stakeholders▲	
	Website(s) for the public to make recommendations on existing regulations▲	
Policy makers provide a public response to:	Consultation comments▲	
	Recommendations made in *ex post* evaluations■	

All/■Always/▲Yes
Major/■ Frequently
Some/■ Sometimes
Never/▲ No

* Publish on a single central government website.
Note: The data reflects Mexico's practices regarding subordinate regulations initiated by the executive, since in Mexico primary laws are rarely initiated by the executive.
Source: Indicators of Regulatory Policy and Governance Survey 2021, http://oe.cd/ireg.

Netherlands

Overview and recent developments

The Netherlands has made some progress in its regulatory practices over the past years. Most notably, it saw an improvement in oversight and quality control for periodic *ex post* evaluation of the effectiveness and efficiency of regulations. The country has been an early adopter of regulatory reform policies and exhibits a culture of open stakeholder engagement processes. Under successive governments, the Better Regulation agenda has been largely focused on burden reduction for business and citizens.

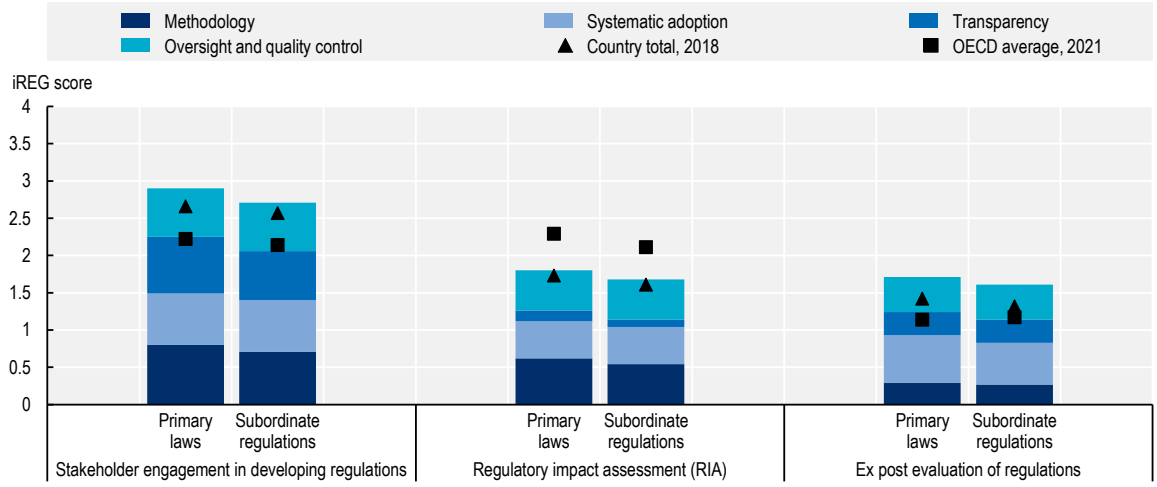
The Integraal Afwegingskader (IAK) combines existing requirements and instructions for *ex ante* regulatory impact assessment. Measuring the regulatory burden on companies and citizens is still a key element of the framework, aided by relatively strong regulatory oversight on this component. However, the IAK has seen gradual updates over time to incorporate other impacts e.g. since 2018, the IAK includes new guidelines on the impacts on borders regions, gender equality and developing countries and the Sustainable Development Goals. SMEs are now engaged in the early stages of the development of a regulation as part of an SME Test.

The IAK was updated in 2018 to strengthen requirements on ministries to monitor and evaluate regulations after implementation. This happened in response to Article 3.1 of the Compatibility Act 2016 that came into force in January 2018, which committed government to provide an explanation of the objectives, efficiency and effectiveness pursued when introducing new policy proposals. The Inspectorate of the State Budget within the Ministry of Finance now monitors procedural compliance of ministries with Article 3.1, co-ordinates the government-wide *ex post* evaluation framework, and has developed a toolbox with guidance for officials conducting policy evaluations. As part of its work, the inspectorate is also responsible for training and capacity-building.

The Unit for Judicial Affairs and Better Regulation Policy within the Ministry of Justice and Security is responsible for scrutinising the overall compliance with the RIA framework. The Better Regulation Unit within the Ministry of Economic Affairs and Climate Policy co-ordinates the program for regulatory burden reduction and provides oversight on the quality of assessments of regulatory burden. The main focus of the Unit has shifted from a quantitative reduction target on regulatory burdens for firms towards noticeable reductions in terms of problems, irritations and impediments brought forward by firms. The Dutch Advisory Board on Regulatory Burden (ATR) is an arm's-length body linked to the Ministry of Economic Affairs and Climate. Its core task is to advice on and scrutinise proposals for laws, decrees and regulations during the early stages of the legislative process or before or during the consultation phase.

The Netherlands should strengthen regulatory oversight and supervision capacities beyond the focus on regulatory burdens. It could also consider ways to reform the RIA process, to incentivise ministries to carry it out at an earlier point in the regulatory process and to consider and list alternative policy options. Finally, informing the public systematically in advance that a consultation is planned to take place could help to receive more input for regulations.

Indicators of Regulatory Policy and Governance (iREG): Netherlands, 2021



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 the Netherlands).
Source: Indicators of Regulatory Policy and Governance Surveys 2017 and 2021, http://oe.cd/ireg.

Netherlands: Transparency throughout the policy cycle

Inform the public in advance that:	A public consultation is planned to take place	
	Regulatory impact assessment (RIA) is due to take place▲	
	Ex post evaluations are planned to take place	
Consult with stakeholders on:	Draft regulations	
	Evaluations of existing regulations	
Publish online:	Ongoing consultations*	
	Views of participants in the consultation process▲	
	RIAs	
	Evaluations of existing regulations▲	
Policy makers use:	Interactive website(s) to consult with stakeholders▲	
	Website(s) for the public to make recommendations on existing regulations▲	
Policy makers provide a public response to:	Consultation comments▲	
	Recommendations made in *ex post* evaluations■	

All/■Always/▲Yes
Major/■ Frequently
Some/■ Sometimes
Never/▲ No
* Publish on a single central government website.
Note: The data reflects Netherland's practices regarding primary laws initiated by the executive.
Source: Indicators of Regulatory Policy and Governance Survey 2021, http://oe.cd/ireg.

New Zealand

Overview and recent developments

New Zealand has progressively refined its regulatory management policy in recent years. Regulatory stewardship represents a defining principle within the Public Service Act 2020, and the Chief Executive of the Treasury was recently given formal responsibility for its promotion across the public service. This approach applies to all regulatory agencies and involves adopting a whole-of-system, lifecycle view of regulation. It also involves an increased focus on international regulatory co-operation (IRC) in the design and *ex ante* assessment of new proposals. This will soon be supplemented by an IRC Toolkit, which will build on practical experiences to identify a series of IRC options for reducing regulatory overlap and improving coherence with key partners.

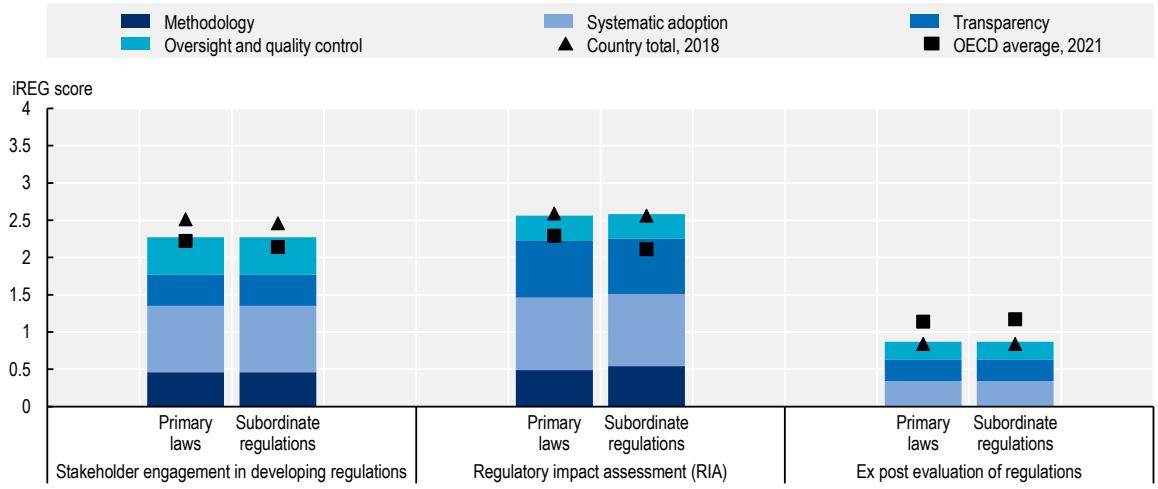
The Regulatory Strategy Team (RST) within the Treasury is responsible for the quality control of regulatory management tools and the systematic improvement of regulation. Its activities have recently expanded to include the regulatory aspects of economic strategy and wellbeing. The RST co-ordinates the Interagency Group on Regulatory Impact Analysis (RIANet), which is a network of government agency experts and specialists interested in the RIA framework and Cabinet's RIA requirements. RST also leads an interagency group that promotes and shares agency experience in implementing regulatory stewardship.

The Cabinet Manual provides that government agencies can adopt a flexible approach in stakeholder consultation and encourages them to develop and maintain close relationships with stakeholders throughout the regulatory policy cycle. Updated in 2018, the Legislation Guidelines provide regulators with advice on how stakeholder engagement should be pursued. It will be important to evaluate the effectiveness and efficiency of the consultation system over time. New Zealand's transparency practices would benefit from a more systematic approach to notifying stakeholders of upcoming opportunities to contribute to regulatory proposals.

The Government's Expectations for Good Regulatory Practice instruct regulatory agencies to monitor the performance of existing regulatory systems to determine whether they remain fit-for-purpose. Although relatively few formal *ex post* evaluations have been undertaken, the 2019 Assessment of the Crown Pastoral Land Regulatory System provides a notable example on which to build. The 2019 Guidance Note on Best Practice Monitoring, Evaluation, and Review (MER) may also contribute to more widespread evaluation in future, by requiring departments to specify how they will monitor and evaluate regulatory changes in RIA and establishing a framework for engaging in MER.

RIA is required for all primary laws and subordinate regulations. 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 assessed as not meeting the quality assurance criteria. In 2020, revised Impact Analysis Requirements introduced conditional exemptions from conducting RIA when regulations are enacted to tackle an emergency.

Indicators of Regulatory Policy and Governance (iREG): New Zealand, 2021



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 (92% of all primary laws in New Zealand).
Source: Indicators of Regulatory Policy and Governance Surveys 2017 and 2021, http://oe.cd/ireg.

New Zealand: Transparency throughout the policy cycle

Inform the public in advance that:	A public consultation is planned to take place	
	Regulatory impact assessment (RIA) is due to take place▲	
	Ex post evaluations are planned to take place	
Consult with stakeholders on:	Draft regulations	
	Evaluations of existing regulations	
Publish online:	Ongoing consultations*	
	Views of participants in the consultation process▲	
	RIAs	
	Evaluations of existing regulations▲	
Policy makers use:	Interactive website(s) to consult with stakeholders▲	
	Website(s) for the public to make recommendations on existing regulations▲	
Policy makers provide a public response to:	Consultation comments▲	
	Recommendations made in *ex post* evaluations■	

All/■Always/▲Yes
Major/■ Frequently
Some/■ Sometimes
Never/▲ No
* Publish on a single central government website.
Note: The data reflects New Zealand's practices regarding primary laws initiated by the executive.
Source: Indicators of Regulatory Policy and Governance Survey 2021, http://oe.cd/ireg.

Norway

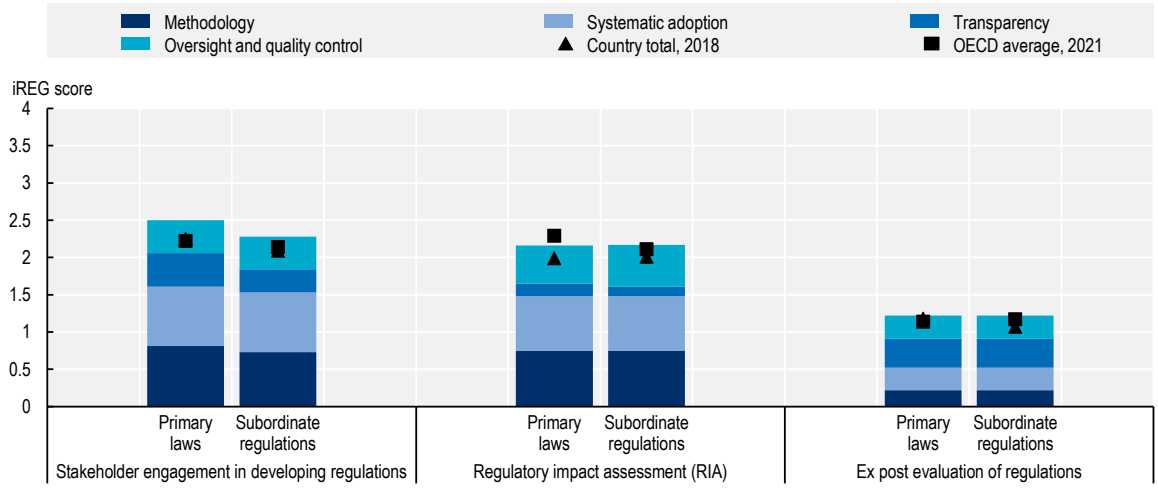
Overview and recent developments

Norway has made efforts to tackle the challenges raised by emerging technologies and strengthen its regulatory assessment system. In 2018 and 2019, Norway implemented regulatory testbeds and sandboxes in several sectors, with the objective of encouraging innovation while increasing the country's understanding of the potential risks and fostering the development of relevant guidance for regulated parties. Moreover, an updated version of the *Guidance Notes on the Instructions for Official Studies* was published in 2018. Regulators are encouraged to quantify the impact of proposed regulations to inform decision making. While some RIAs are publicly available, transparency could be enhanced by publishing them more systematically for consultation and informing the public in advance that they will have the opportunity to comment.

The Ministry of Finance, is responsible for the Instructions for Official Studies, which sets the requirements on the preparation of regulatory proposals, RIA, stakeholder engagement and *ex post* evaluation. The Ministry of Finance has delegated responsibility for the administration of the Instructions and for providing guidance on its provisions to the Norwegian Government Agency for Public and Financial Management (DFØ). All ministries may initiate efforts for improving the effectiveness of regulations. The Ministry of Justice and Public Security is responsible for providing guidance on those provisions of the Instructions that are specific to the preparation of laws and regulations, and has the main responsibility for scrutinising the legal quality of regulations under development. The Ministry of Foreign Affairs is responsible for providing guidance on those provisions of the Instructions that relate to EEA and Schengen matters. The Better Regulation Council is an arm's length oversight body 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 Council publishes formal opinions on the quality of RIAs and can make suggestions for revision. Its tasks have evolved to capitalise on experience acquired over the years, for example by focusing more strongly on scrutinising whether regulatory proposals are innovation-friendly, putting forward proposals for regulatory improvement such as the report on enhancing RIA quality in the European Economic Area, and conducting advocacy work across government through meetings and seminars with the main producers of regulatory proposals. Its mandate was expanded accordingly in 2020.

In recent years, the Norwegian Better Regulation Council has gained experience and has strengthened its capabilities to scrutinise and provide comments on stakeholder engagement activities. While public consultation is conducted for all draft laws, Norway could increase the frequency of consultations early in the process, before a decision to regulate has been made. *Ex post* evaluations are initiated by ministries. In important policy areas, ministries normally appoint official commissions to evaluate existing laws and regulations.

Indicators of Regulatory Policy and Governance (iREG): Norway, 2021



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 2017 and 2021, http://oe.cd/ireg.

Norway: Transparency throughout the policy cycle

Inform the public in advance that:	A public consultation is planned to take place	
	Regulatory impact assessment (RIA) is due to take place▲	
	Ex post evaluations are planned to take place	
Consult with stakeholders on:	Draft regulations	
	Evaluations of existing regulations	
Publish online:	Ongoing consultations*	
	Views of participants in the consultation process▲	
	RIAs	
	Evaluations of existing regulations▲	
Policy makers use:	Interactive website(s) to consult with stakeholders▲	
	Website(s) for the public to make recommendations on existing regulations▲	
Policy makers provide a public response to:	Consultation comments▲	
	Recommendations made in *ex post* evaluations■	

All/■Always/▲Yes
Major/■ Frequently
Some/■ Sometimes
Never/▲ No
* Publish on a single central government website.
Note: The data reflects Norway's practices regarding primary laws initiated by the executive.
Source: Indicators of Regulatory Policy and Governance Survey 2021, http://oe.cd/ireg.

Poland

Overview and recent developments

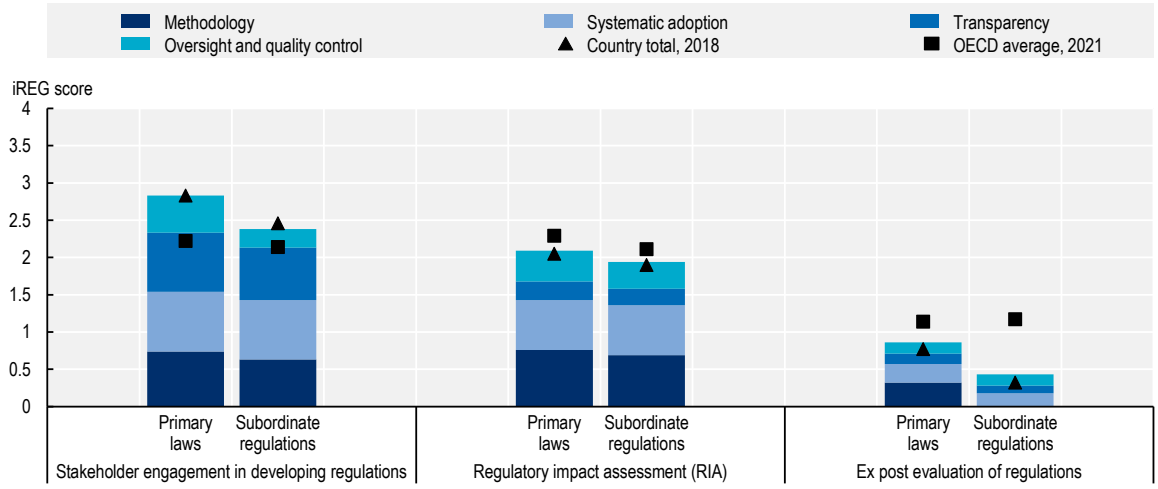
Poland has made some recent adjustments to its legal framework for regulatory management. Following changes in the Rules of Works of the Council of Ministers in 2019, draft laws can now be returned to ministries if public consultation did not take place or if the consultation process did not comply with the rules, including if the consultation report is absent. In 2018, the requirement for assessing the impact of economic law on SMEs has been strengthened in the Law for Entrepreneurs Act, and the Centre for Strategic Analysis was established as the central government body responsible for assessing regulatory impact assessments (RIAs). RIAs continue to be required for all laws and regulations.

The Department for the Improvement of Business Regulation within the Ministry of Economic Development and Technology is responsible for the systematic improvement of regulation and the better regulation agenda in Poland. The Chancellery of the Prime Minister is responsible for the central oversight of regulatory management tools in Poland. It encompasses several regulatory oversight instances. The Government Programming Board is an auxiliary body to the Council of Ministers that receives administrative support from the Government Programming Department. The Board sets the government work programme, which includes legislation as well as strategic programmes and projects, and is responsible for the quality control of stakeholder engagement, RIA and *ex post* evaluations. The Center for Strategic Analysis (CAS) was established in April 2018 to act as an advisory body to the Prime Minister. It participates in the legislative process directly as well as indirectly, through the deputy director of the RIA Department, who operates within the CAS and acts as a RIA co-ordinator upon designation by the Prime Minister. It issues opinions on the impact of proposals for the government work programme. Moreover, the CAS is responsible for reviewing all RIAs submitted by government ministries and offices for primary laws and subordinate regulations issued by the Council of Ministers and the Prime Minister, and it also examines RIAs for government acts and bills before their appraisal by the Council of Ministers' Standing Committee.

Ex post evaluations can be required at the request of the Council of Ministers or subsidiary bodies, since 2019 at the request of the Chief of Centre for Strategic Analysis or Ombudsman for SMEs, and since 2020 at the request of the President of the Government Legislative Center. However, by the end of 2020 no evaluation had been conducted according to these recent procedures. Over time, *ex post* evaluations could be conducted more systematically and broadened beyond administrative burdens, focusing more on the total social, economic, and environmental impacts of regulation.

Regulatory policy requirements for the executive including public consultation do not apply to laws initiated by parliament, which constituted 21% of all laws passed on average between 2017 and 2020. The requirements introduced in the Law for Entrepreneurs Act also apply to non-governmental drafts with the exception of laws initiated by civic initiatives.

Indicators of Regulatory Policy and Governance (iREG): Poland, 2021



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 (75% of all primary laws in Poland).
Source: Indicators of Regulatory Policy and Governance Surveys 2017 and 2021, http://oe.cd/ireg.

Poland: Transparency throughout the policy cycle

Inform the public in advance that:	A public consultation is planned to take place	
	Regulatory impact assessment (RIA) is due to take place▲	
	Ex post evaluations are planned to take place	
Consult with stakeholders on:	Draft regulations	
	Evaluations of existing regulations	
Publish online:	Ongoing consultations*	
	Views of participants in the consultation process▲	
	RIAs	
	Evaluations of existing regulations▲	
Policy makers use:	Interactive website(s) to consult with stakeholders▲	
	Website(s) for the public to make recommendations on existing regulations▲	
Policy makers provide a public response to:	Consultation comments▲	
	Recommendations made in *ex post* evaluations■	

All/■Always/▲Yes
Major/■ Frequently
Some/■ Sometimes
Never/▲ No
* Publish on a single central government website.
Note: The data reflects Poland's practices regarding primary laws initiated by the executive.
Source: Indicators of Regulatory Policy and Governance Survey 2021, http://oe.cd/ireg.

Portugal

Overview and recent developments

The Government of Portugal has recently undertaken a range of key reforms to implement and strengthen regulatory impact assessments (RIA). Since the adoption of Resolution No. 44 to pilot a RIA framework for subordinate regulations in 2017, Portugal has adopted two additional reforms to formally establish the use of RIA and to expand it further in 2018 and 2019 respectively. Regulatory alternatives as well as an increasingly broad range of impacts are now required to be analysed. In addition, the scrutiny of quality of RIA for subordinate regulations has been reinforced.

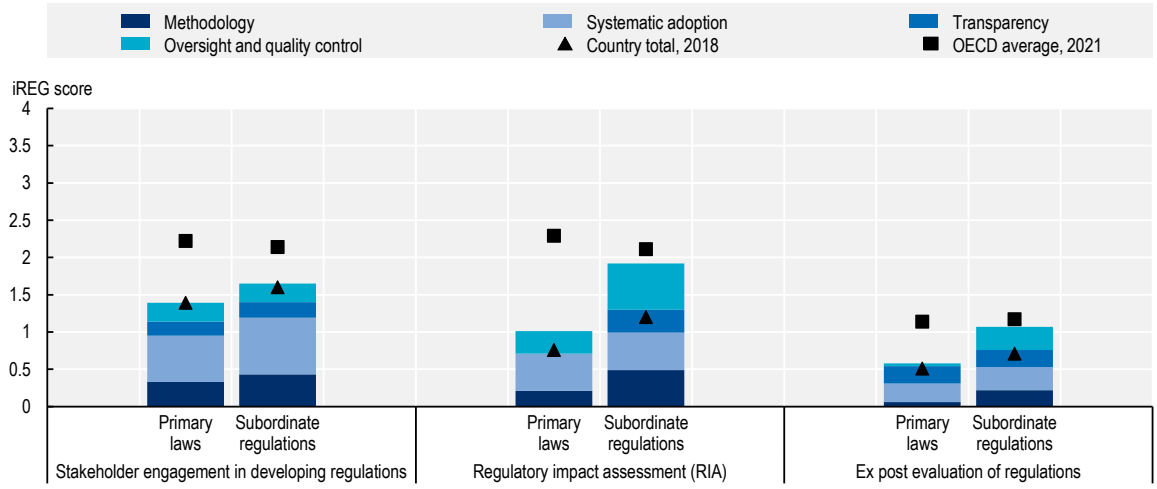
Portugal's regulatory oversight body is the Technical Unit for Legislative Impact Assessment (UTAIL) within the Legal Centre of the Presidency of the Council of Ministers. It was created in 2017 as a supervising body in support of RIA implementation, with responsibility for the impact assessment framework and methodology. It provides technical support and training to the ministries and other public administrative bodies as well as the review of assessment reports. Upon completion of a pilot phase in 2018, its mandate was made permanent and expanded to encompass a range of additional functions and areas, some of which used to be carried out by the Agency for Administrative Modernisation. New attributions of UTAIL now include quality control of *ex post* evaluations, checking whether stakeholders have been engaged in RIA exercises, and evaluating regulatory policy overall.

Although the role of RIA has expanded, it is not yet used in consultations with stakeholders. A new central consultation platform has been introduced for subordinate regulations, which is only used for late-stage consultation 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.

Portugal has been very involved in administrative simplification programmes for several years and members of the public are still able to submit suggestions about administrative processes. *Ex post* evaluation of existing regulations is not mandatory. Following the COVID-19 pandemic, sunsetting clauses have been introduced for some regulations. UTAIL has taken additional functions regarding *ex post* evaluation, including the role of co-ordinating it across the public administration and assisting officials in conducting *ex post* evaluation. Portugal could consider introducing systematic requirements to undertake *ex post* evaluation as well as introducing "in-depth" reviews in particular sectors or policy areas to identify core reforms to Portugal's regulatory framework.

Indicators presented on RIA and stakeholder engagement for primary laws only cover processes carried out by the executive, which initiates approximately 38% of primary laws in Portugal. There is no mandatory requirement for consultation with the general public or for conducting RIAs for primary laws initiated by the parliament.

Indicators of Regulatory Policy and Governance (iREG): Portugal, 2021



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 (38% of all primary laws in Portugal).
Source: Indicators of Regulatory Policy and Governance Surveys 2017 and 2021, http://oe.cd/ireg.

Portugal: Transparency throughout the policy cycle

Inform the public in advance that:	A public consultation is planned to take place	
	Regulatory impact assessment (RIA) is due to take place▲	
	Ex post evaluations are planned to take place	
Consult with stakeholders on:	Draft regulations	
	Evaluations of existing regulations	
Publish online:	Ongoing consultations*	
	Views of participants in the consultation process▲	
	RIAs	
	Evaluations of existing regulations▲	
Policy makers use:	Interactive website(s) to consult with stakeholders▲	
	Website(s) for the public to make recommendations on existing regulations▲	
Policy makers provide a public response to:	Consultation comments▲	
	Recommendations made in *ex post* evaluations■	

All/■Always/▲Yes
Major/■ Frequently
Some/■ Sometimes
Never/▲ No

* Publish on a single central government website.
Note: The data reflects Portugal's practices regarding subordinate regulations initiated by the executive, since in Portugal primary laws are rarely initiated by the executive.
Source: Indicators of Regulatory Policy and Governance Survey 2021, http://oe.cd/ireg.

Slovak Republic

Overview and recent developments

The Slovak Republic currently works on implementing the RIA 2020 – Better Regulation Strategy adopted in 2018 that represents a comprehensive approach towards a whole-of-government regulatory policy focusing, among other issues, on improving both *ex ante* and *ex post* evaluation of regulations. So far, a draft methodology for *ex post* evaluation was approved in 2019 and underwent pilot testing, whilst a methodology for stakeholder engagement is currently being developed. In 2021, the government introduced a one-in, two-out approach for regulatory offsetting.

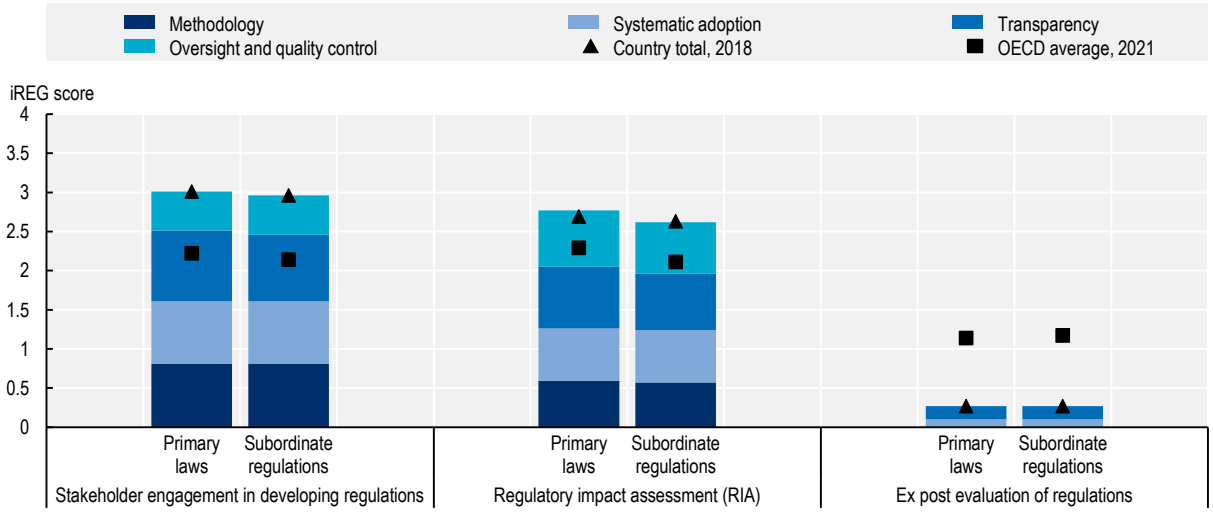
The obligation to conduct regulatory impact assessments has been in place since 2008 with reforms introducing a solid methodology for assessing economic, social and environmental impacts, including an SME Test and impacts on innovation in 2015. Despite these improvements and the analytical resources available to decision makers, in many cases Slovak ministries still struggle with the quantification of wider impacts, focusing mainly on budgetary impacts and impacts on businesses.

Procedures for public consultations in the later stage of the regulatory 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, with three “anti-bureaucratic packages” aimed at reducing administrative burdens for businesses in 2017, 2018 and 2019. In 2020, 115 measures were introduced to reduce administrative burdens, for businesses during the COVID-19 pandemic. The publication of the final methodology for *ex post* evaluation planned for later this year will introduce the requirement for more comprehensive reviews of existing legislation.

The Permanent Working Committee of the Legislative Council of the Slovak Republic at the Ministry of Economy (RIA Committee), established in 2015, is responsible for overseeing the quality of RIAs. Part of its mandate is quality control of stakeholder engagement. Several ministries, including the Ministry of Economy as a co-ordinator, the Ministry of Finance, the Ministry of Labour and Social Affairs, the Ministry of Environment, the Ministry of the Interior and the Deputy Prime Minister’s Office for Investments and Informatisation, are represented in the Committee, as are the Government Office and the Slovak Business Agency. They share competencies for checking the quality of RIAs focusing on their respective area of competences.

Slovakia would benefit from further strengthening regulatory oversight by appointing one body close to the centre of government responsible for evaluating integrated impacts, rather than spreading the responsibility across several ministries, as is currently the case with the RIA Committee. This body could also take on the responsibility of evaluating the quality of *ex post* evaluations, once more comprehensive reviews will be mandatory with the introduction of the new methodology for *ex post* evaluation. Finally, the new *ex post* evaluation methodology could serve as a gateway to introducing targeted, in-depth reviews of existing regulations.

Indicators of Regulatory Policy and Governance (iREG): Slovak Republic, 2021



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 (68% of all primary laws in the Slovak Republic).
Source: Indicators of Regulatory Policy and Governance Surveys 2017 and 2021, http://oe.cd/ireg.

Slovak Republic: Transparency throughout the policy cycle

Inform the public in advance that:	A public consultation is planned to take place	
	Regulatory impact assessment (RIA) is due to take place ▲	
	Ex post evaluations are planned to take place	
Consult with stakeholders on:	Draft regulations	
	Evaluations of existing regulations	
Publish online:	Ongoing consultations*	
	Views of participants in the consultation process ▲	
	RIAs	
	Evaluations of existing regulations ▲	
Policy makers use:	Interactive website(s) to consult with stakeholders ▲	
	Website(s) for the public to make recommendations on existing regulations ▲	
Policy makers provide a public response to:	Consultation comments ▲	
	Recommendations made in *ex post* evaluations ■	

All/■ Always/▲ Yes
Major/■ Frequently
Some/■ Sometimes
Never/▲ No
* Publish on a single central government website.
Note: The data reflects Slovak Republic's practices regarding primary laws initiated by the executive.
Source: Indicators of Regulatory Policy and Governance Survey 2021, http://oe.cd/ireg.

Slovenia

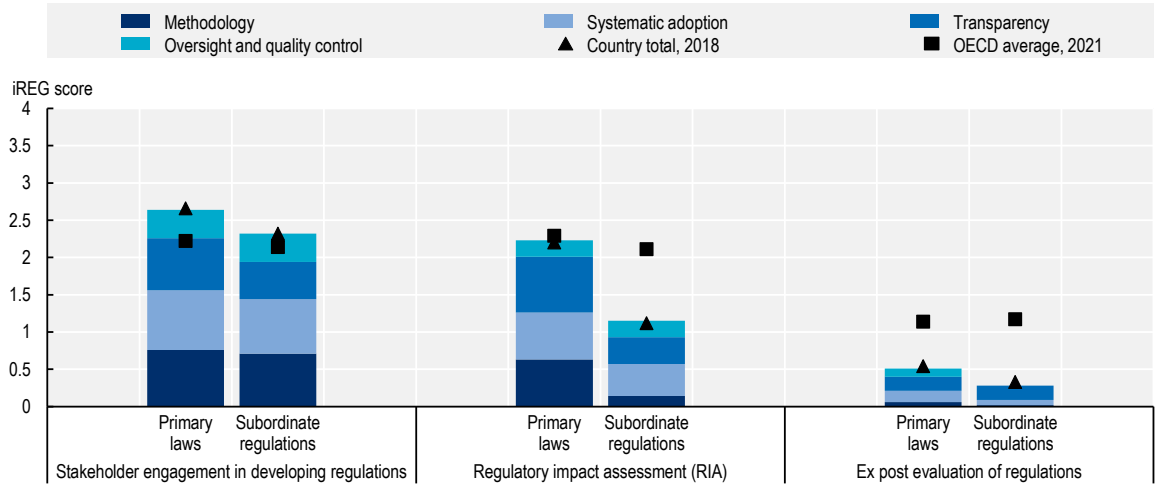
Overview and recent developments

Slovenia is currently undertaking efforts to strengthen regulatory policy with the Action Plan 2019-2022. The action plan foresees the extension of the RIA guidance document to cover the assessment of non-financial impacts and recommends the introduction of preliminary impact assessments. Currently, regulatory impact assessment (RIA) is carried out for all primary laws and for some subordinate regulations. In 2019, for 96% of the draft primary laws a RIA was conducted during or after the drafting of the legislative text. Impact assessment requirements for subordinate regulations are less stringent than those for primary laws. The development of secondary regulations does not require a quantification of the costs and benefits and assessments of the impacts are done only for some secondary regulations. The RIA process, particularly for subordinate regulations, could be strengthened by introducing a threshold test or proportionality criteria that would help determine which regulations require an in-depth assessment. The Action Plan represents a positive step in this regard as it foresees a deeper analysis of potential social and environmental impacts, among others.

Although the Action Plan introduces changes in the mandate of the General Secretariat of the Government, oversight functions remain spread across different institutions. The General Secretariat of the Government is now responsible for monitoring the implementation of stakeholder consultation. Oversight of RIA is the responsibility of the Ministry of Public Administration (MPA) as well as of the Ministry of Economic Development and Technology. The Government Office of Legislation (GoL) examines legislative proposals from government and those acts for which the National Assembly seeks the opinion of the government and is also involved in the provision of guidance relating to regulatory management tools as well as in the co-ordination on regulatory policy.

Slovenia was an early adopter of the Standard Cost Model (SCM), supported by the application of the SME test, which contributes to the assessments of economic impacts. Slovenia continues to focus the majority of its *ex post* evaluation efforts on reducing administrative burdens. Its webportal Stop Bureaucracy (https://www.stopbirokraciji.gov.si) allows citizens and business representatives to provide suggestions to cut red tape and monitor their implementation through the single document website (www.enotnazbirkaukrepov.gov.si). While *ex post* evaluation is mandatory for primary laws adopted through emergency procedures, Slovenia could expand the use of this tool to other regulations and assess whether the objectives of existing regulations are being met. Stakeholder engagement is mandatory for all primary laws and subordinate regulations. The country could increase further engagement with stakeholders by systematically informing the public in advance of planned consultations, RIAs and *ex post* evaluations.

Indicators of Regulatory Policy and Governance (iREG): Slovenia, 2021



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 (90% of all primary laws in Slovenia).
Source: Indicators of Regulatory Policy and Governance Surveys 2017 and 2021, http://oe.cd/ireg.

Slovenia: Transparency throughout the policy cycle

Inform the public in advance that:	A public consultation is planned to take place	
	Regulatory impact assessment (RIA) is due to take place▲	
	Ex post evaluations are planned to take place	
Consult with stakeholders on:	Draft regulations	■
	Evaluations of existing regulations	
Publish online:	Ongoing consultations*	■
	Views of participants in the consultation process▲	■
	RIAs	■
	Evaluations of existing regulations▲	
Policy makers use:	Interactive website(s) to consult with stakeholders▲	■
	Website(s) for the public to make recommendations on existing regulations▲	■
Policy makers provide a public response to:	Consultation comments▲	■
	Recommendations made in *ex post* evaluations■	

■ All/■Always/▲Yes
■ Major/■ Frequently
■ Some/■ Sometimes
■ Never/▲ No

* Publish on a single central government website.
Note: The data reflects Slovenia's practices regarding primary laws initiated by the executive.
Source: Indicators of Regulatory Policy and Governance Survey 2021, http://oe.cd/ireg.

Spain

Overview and recent developments

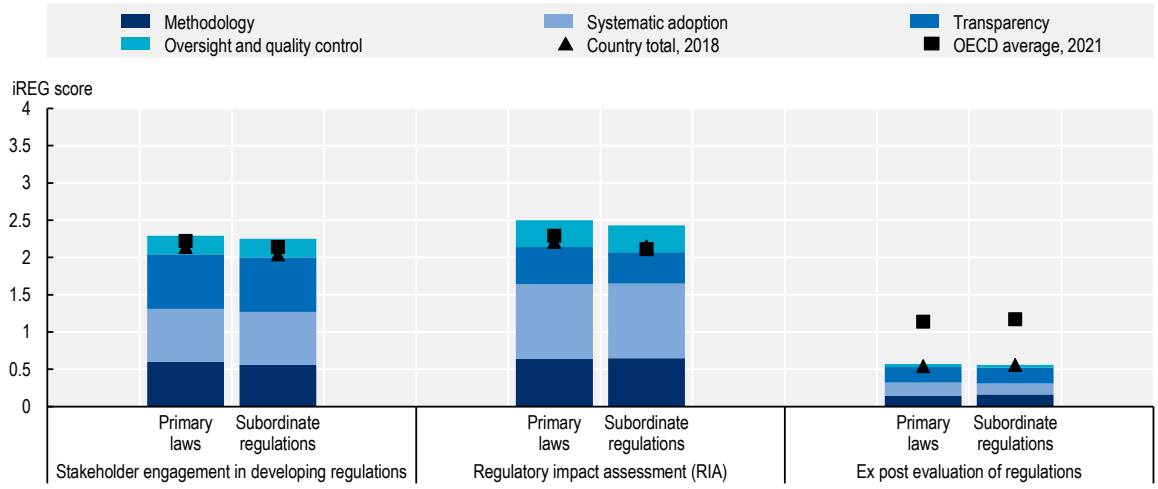
Spain is gradually stepping up its Better Regulation efforts by expanding its initial focus on administrative simplification through the development of stakeholder engagement and *ex post* evaluation. Moreover, regulatory impact assessment (RIA) has been strengthened through the creation of a dedicated body.

Since 2018, the Regulatory Coordination and Quality Office, within the Ministry of the Presidency, Relations with the Parliament and Democratic Memory is the country's permanent body in charge of promoting the quality, co-ordination and coherence of rulemaking activity undertaken by the executive. To that end, the applicable legal framework foresees the development of an information system enabling direct and secure communication with ministerial departments. The Office oversees the implementation of Better Regulation requirements, chiefly RIA. It also supervises the initial definition of the objectives and methodology for the *ex post* evaluation of regulations covered by RIAs, but does not scrutinise *ex post* evaluations themselves. The Ministry of Territorial Policy and Public Function checks the quality of various RIA components and is responsible for promoting and monitoring administrative burden reduction and public consultation and participation. The Council of State, in turn, assesses the legality of regulations and their development, and watches over the public administration's correct functioning and legal quality of regulations initiated by the executive. It issues statements in response to consultations from ministries, autonomous community presidents and certain state entities.

While stakeholder engagement is not undertaken on a fully systematic basis yet, the country has improved the transparency of its system. The new centralised online platform (http://transparencia.gob.es) lists all ongoing consultations and allows citizens to engage in normative activity at two important points in the policy cycle: before regulatory development starts and at the draft regulation stage. The platform also provides access to the annual regulatory planning agenda for primary laws and subordinate regulations. Moreover, statistics on citizens' use of the platform, which also hosts content related to the broader topic of transparency and good governance in the public administration, are published yearly.

RIA is required for all regulations. Since October 2017, impacts of regulatory proposals on competition and SMEs must be systematically considered, and updated thresholds apply for the conduct of *ex post* evaluations. The legal basis for RIA was updated in October 2017 by means of a Royal Decree aimed at adapting to changes in administrative law and aligning RIA requirements with best practices promoted by the OECD and the EU. Update of the 2009 RIA guidelines is still pending despite the need for clear guidance on data collection methods and assessment methodologies in this area. In the same vein, since *ex post* evaluation of regulations is not systematic, developing targeted guidance and standard evaluation techniques would contribute to a more widespread and consistent evaluation of how regulations actually work in practice.

Indicators of Regulatory Policy and Governance (iREG): Spain, 2021



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 (90% of all primary laws in Spain).
Source: Indicators of Regulatory Policy and Governance Surveys 2017 and 2021, http://oe.cd/ireg.

Spain: Transparency throughout the policy cycle

Inform the public in advance that:	A public consultation is planned to take place	
	Regulatory impact assessment (RIA) is due to take place▲	
	Ex post evaluations are planned to take place	
Consult with stakeholders on:	Draft regulations	
	Evaluations of existing regulations	
Publish online:	Ongoing consultations*	
	Views of participants in the consultation process▲	
	RIAs	
	Evaluations of existing regulations▲	
Policy makers use:	Interactive website(s) to consult with stakeholders▲	
	Website(s) for the public to make recommendations on existing regulations▲	
Policy makers provide a public response to:	Consultation comments▲	
	Recommendations made in *ex post* evaluations■	

All/■Always/▲Yes
Major/■ Frequently
Some/■ Sometimes
Never/▲ No
* Publish on a single central government website.
Note: The data reflects Spain's practices regarding primary laws initiated by the executive.
Source: Indicators of Regulatory Policy and Governance Survey 2021, http://oe.cd/ireg.

Sweden

Overview and recent developments

Stakeholder engagement continues to be engrained into the law-making process in Sweden. Sweden now makes more systematic use of their central government portal where consultations and their relevant documentation are posted to receive feedback from authorities, organisations, municipalities, relevant stakeholders and the general public. Stakeholders can provide their feedback by email to the corresponding policy maker, which are then made publicly available on the same website. Sweden could benefit from moving towards a more interactive consultation website, where the public at large can publicly provide their feedback and react to the suggestions of other stakeholders.

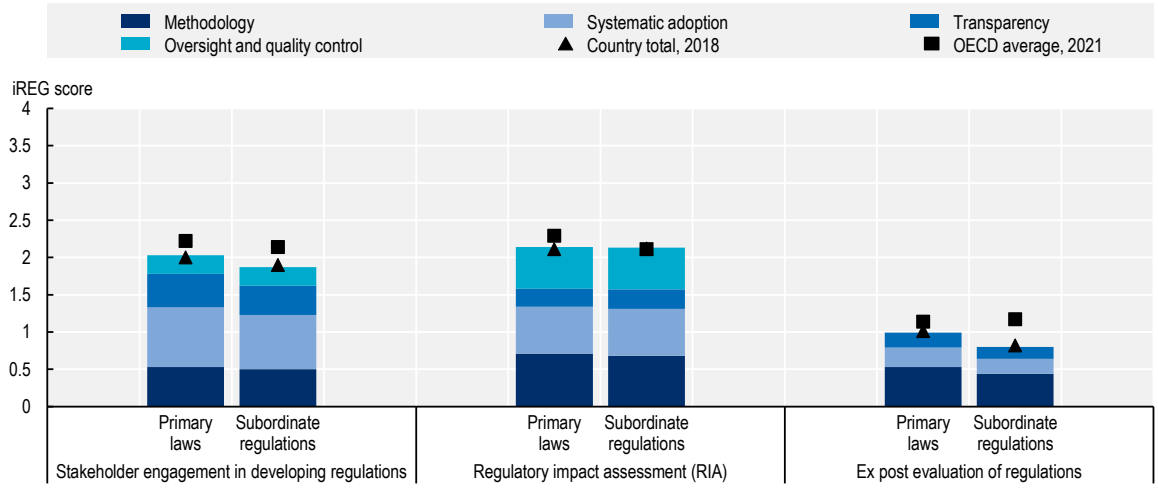
When a committee of inquiry is appointed to investigate a policy issue, it normally includes a mix of policy makers, experts, and politicians, enabling consultation early in the process. The committee analyses and evaluates the proposal. The final report is sent to relevant stakeholders for consideration, before the joint draft procedure continues within the government offices.

Simplification remains a cornerstone of Sweden's regulatory policy. In 2020, the Committee for Technological Innovation and Ethics (Komet) created a forum to receive feedback from citizens and businesses on regulatory barriers for technological development. This was followed by feasibility studies on 11 of the received proposals regarding health, science and transport.

Ex ante evaluation is required for all primary laws and subordinate regulations by the 2007 Ordinance on Impact Analysis of Regulation. In 2018, the guidelines for conducting impact assessment were updated to provide more detailed guidance on assessing economic, social and environmental impacts, as well as on how consultations with relevant actors can be conducted. *Ex post* evaluation is normally conducted *ad hoc* by a ministry, government agency, or by a committee of inquiry, as there is no requirement to carry out *ex post* evaluations systematically. 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.

The Swedish Better Regulation Council is a is a decision-making body responsible for reviewing the quality of impact assessments to legislative proposals with effects on businesses. Its secretariat is located within the Swedish Agency for Economic and Regional Growth. The Agency, in turn, is responsible for methodological development, guidance and training in regulatory management tools. It also develops and proposes simplification measures, participates in international activities aimed at simplifying regulation for businesses, and promotes awareness among other government agencies of how businesses are affected by the enforcement of regulations.

Indicators of Regulatory Policy and Governance (iREG): Sweden, 2021



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 2017 and 2021, http://oe.cd/ireg.

Sweden: Transparency throughout the policy cycle

Inform the public in advance that:	A public consultation is planned to take place	
	Regulatory impact assessment (RIA) is due to take place▲	■
	Ex post evaluations are planned to take place	
Consult with stakeholders on:	Draft regulations	■
	Evaluations of existing regulations	■
Publish online:	Ongoing consultations*	■
	Views of participants in the consultation process▲	■
	RIAs	■
	Evaluations of existing regulations▲	■
Policy makers use:	Interactive website(s) to consult with stakeholders▲	
	Website(s) for the public to make recommendations on existing regulations▲	
Policy makers provide a public response to:	Consultation comments▲	
	Recommendations made in *ex post* evaluations■	

■ All/■Always/▲Yes
■ Major/■ Frequently
■ Some/■ Sometimes
■ Never/▲ No
* Publish on a single central government website.
Note: The data reflects Sweden's practices regarding primary laws initiated by the executive.
Source: Indicators of Regulatory Policy and Governance Survey 2021, http://oe.cd/ireg

Switzerland

Overview and recent developments

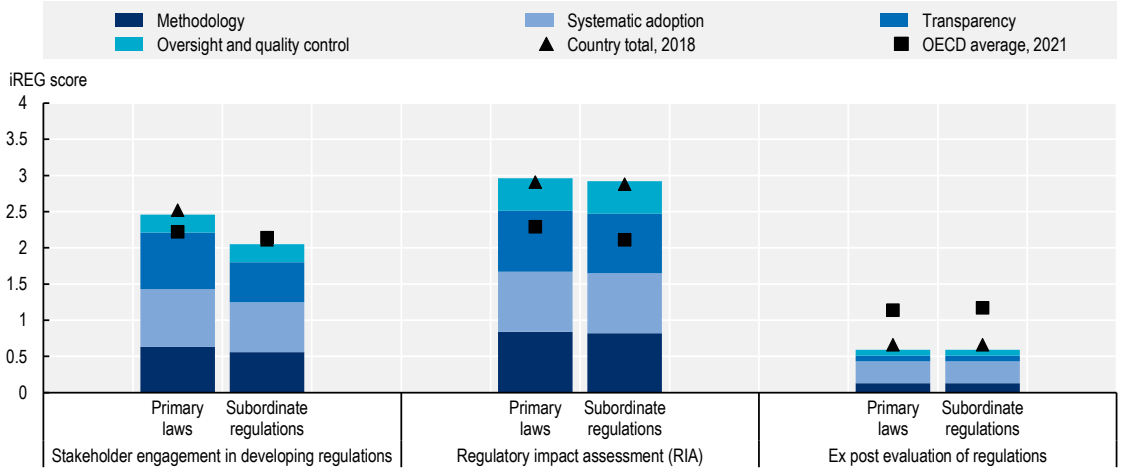
Switzerland has reformed its regulatory policy framework in 2019, in particular through the issuing of new regulatory impact assessment (RIA) directives by the Federal Council. The requirement for RIA to be conducted for all regulations in Switzerland has been refined with a “quick check” procedure and additional consideration for proportionality. All regulations must undergo a preliminary RIA, which will allow to identify regulations to be subject to an in-depth assessment. A threshold test, based on quantitative and qualitative criteria, is applied to determine whether a regulation should be subject to a simplified or full RIA. The obligation to quantify regulatory costs has been extended and systematised, such as for all new regulations which cause additional regulatory costs for more than 1 000 companies or which place a particular burden on an economic sector. Switzerland focuses less on quantifying benefits and costs of regulations to citizens.

The State Secretariat for Economic Affairs (SECO), within the Federal Department of Economic Affairs, Education and Research, issues guidelines for conducting RIA, reviews selected RIAs to provide non-public opinions on their quality, and is responsible for promoting international regulatory co-operation (IRC). SECO also publishes reports on the level of regulatory costs and results from business perception surveys of administrative burdens. A new regulation has been issued to formally and permanently define SECO's tasks and competencies with regard to RIA. 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.

Stakeholders can comment on all draft primary laws and major subordinate regulations in public online consultations, which last at least 12 weeks. Switzerland is one of the few OECD members that informs its citizens in advance of upcoming consultations. Early-stage stakeholder engagement on the nature of the problem and possible solutions are 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.

The requirement for policy evaluation is enshrined in the Swiss Constitution. However, *ex post* evaluation of regulations is mandatory only for some regulations. While there are co-ordination mechanisms in place across the administration as well as support units for evaluation, there are no standardised evaluation techniques to be used when conducting evaluations.

Indicators of Regulatory Policy and Governance (iREG): Switzerland, 2021



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 (82% of all primary laws in Switzerland).
Source: Indicators of Regulatory Policy and Governance Surveys 2017 and 2021, http://oe.cd/ireg.

Switzerland: Transparency throughout the policy cycle

Inform the public in advance that:	A public consultation is planned to take place	
	Regulatory impact assessment (RIA) is due to take place▲	
	Ex post evaluations are planned to take place	
Consult with stakeholders on:	Draft regulations	
	Evaluations of existing regulations	
Publish online:	Ongoing consultations*	
	Views of participants in the consultation process▲	
	RIAs	
	Evaluations of existing regulations▲	
Policy makers use:	Interactive website(s) to consult with stakeholders▲	
	Website(s) for the public to make recommendations on existing regulations▲	
Policy makers provide a public response to:	Consultation comments▲	
	Recommendations made in *ex post* evaluations■	

All/■Always/▲Yes
Major/■ Frequently
Some/■ Sometimes
Never/▲ No
* Publish on a single central government website.
Note: The data reflects Switzerland's practices regarding primary laws initiated by the executive.
Source: Indicators of Regulatory Policy and Governance Survey 2021, http://oe.cd/ireg.

Turkey

Overview and recent developments

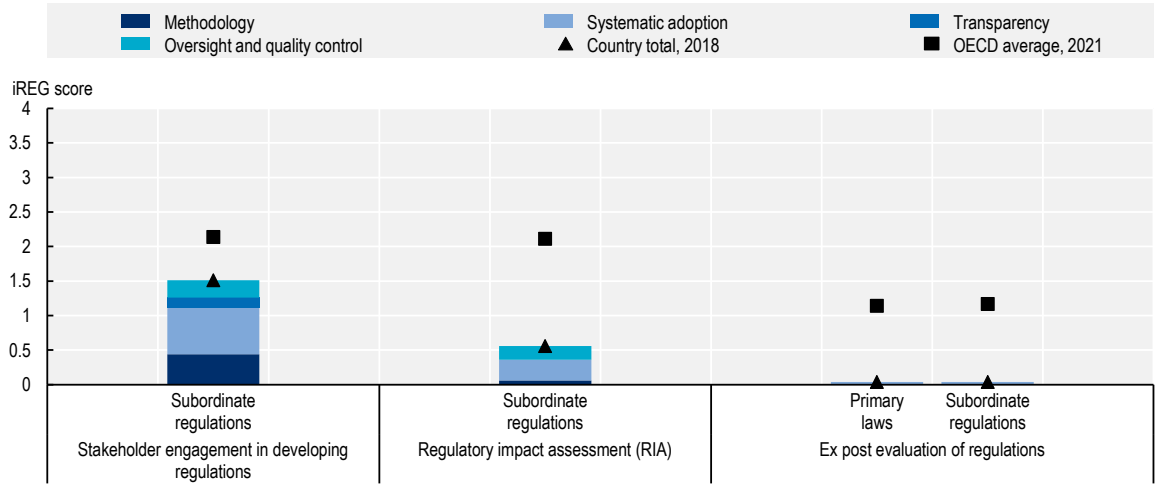
Turkey started its better regulation agenda in the early 2000s. The “By-Law on Principles and Procedures of Drafting Legislation” decree issued 17 February 2006 by the Council of Ministers (referred to as the By-Law), is the foundational framework for improving and maintaining legal and regulatory quality in Turkey. The By-Law is currently under revision following amendments made in the Turkish Constitution in 2017 which took effect in 2018.

There is no evidence of consultation open to the general public in Turkey over the last few years, such as consultations conducted online or for a wider audience. Stakeholder engagement could be improved by instituting a systematic approach to open 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 yet 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. *Ex post* evaluations should be systemised to inform new policy design as well as assess whether existing regulations are meeting their objectives.

Currently RIA is not applied to any primary laws. RIA only applies to subordinate regulations if the President requires it to be undertaken.

Indicators of Regulatory Policy and Governance (iREG): Turkey, 2021



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. Due to a change in the political system during the survey period affecting the processes for developing laws, composite indicators are not available for stakeholder engagement in developing regulations and RIA for primary laws.
Source: Indicators of Regulatory Policy and Governance Surveys 2017 and 2021, http://oe.cd/ireg.

Turkey: Transparency throughout the policy cycle

Inform the public in advance that:	A public consultation is planned to take place	
	Regulatory impact assessment (RIA) is due to take place▲	
	Ex post evaluations are planned to take place	
Consult with stakeholders on:	Draft regulations	
	Evaluations of existing regulations	
Publish online:	Ongoing consultations*	
	Views of participants in the consultation process▲	
	RIAs	
	Evaluations of existing regulations▲	
Policy makers use:	Interactive website(s) to consult with stakeholders▲	
	Website(s) for the public to make recommendations on existing regulations▲	
Policy makers provide a public response to:	Consultation comments▲	
	Recommendations made in *ex post* evaluations■	

All/■Always/▲Yes
Major/■ Frequently
Some/■ Sometimes
Never/▲ No

Note: The data reflects Turkey's practices regarding subordinate regulations.
Source: Indicators of Regulatory Policy and Governance Survey 2021, http://oe.cd/ireg.

United Kingdom

Overview and recent development

The United Kingdom continues to invest in broadening the scope of its regulatory policy system. In response to an OECD IRC review published in 2020, the government has committed to develop an IRC strategy for the whole-of-government. A question was added to the RIA template in 2019, asking if a new measure was likely to impact on international trade and investment. The government published a White Paper in 2019, "Regulation for the Fourth Industrial Revolution", containing policies for reforming the regulatory system to support innovation. As part of this suite of policies, a new Regulatory Horizon Council has been established to advise the government on regulations that may need to be reformed to keep pace with technological change. Furthermore, an Innovation Test has been piloted to ensure that the impact of regulation on innovation is considered in the early stages of policy making.

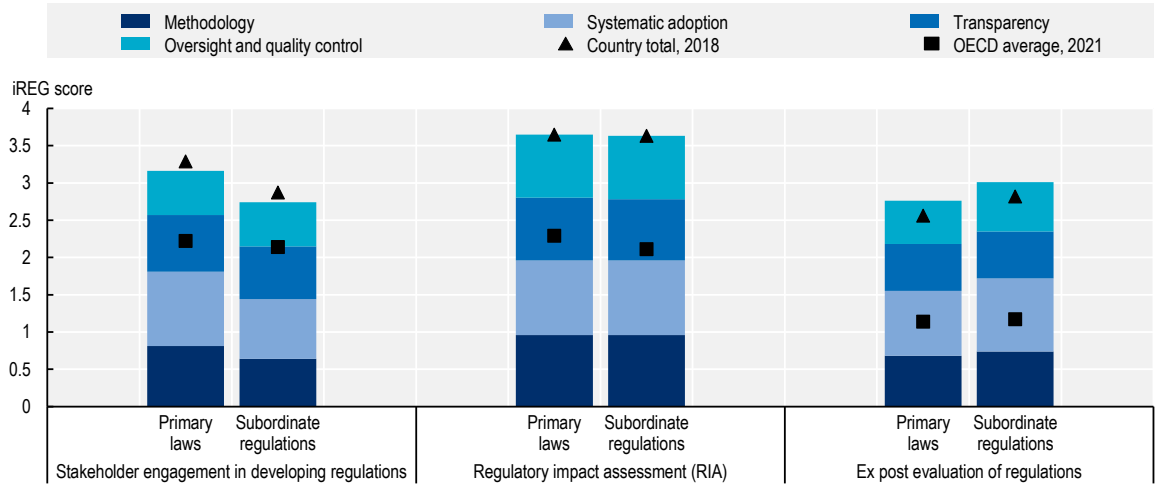
However, the UK's regulatory policy system continues to have a particular focus on business, as the Small Business Enterprise and Employment Act 2015 obliges the government to set a target for the change of regulatory burdens on business and civil society organisations for each Parliament. Government departments regularly conduct post implementation reviews, in particular for all measures with a significant impact on business. In addition, at the pre-implementation and review stages, new regulatory measures with significant regulatory impacts on business are expected to have full RIAs and be submitted to the Regulatory Policy Committee (RPC) for scrutiny. The United Kingdom may benefit from extending the focus of its current regulatory policy agenda on business on other elements important for sustainable and inclusive growth.

The 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 and *ex post* evaluations of legislation. Significant changes to the scope of the RPC's scrutiny function were introduced during 2017-19. A new higher *de minimis* (threshold) rule was introduced to the better regulation framework, whereby only measures with significant regulatory impacts on businesses (greater than -/+ GBP 5m) are expected to have full RIAs and be submitted to the RPC for scrutiny.

The Better Regulation Executive (BRE), 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 Cabinet Office is responsible for the Guide to Making Legislation and providing training and support to government departments making legislation. It is also in charge of convening cross-government policy positions, mainly through the collective agreement process.

Public consultations occur systematically for new regulations in the United Kingdom and are conducted over the internet. To enhance the accessibility of consultations, the United Kingdom could introduce minimum consultation periods with the general public.

Indicators of Regulatory Policy and Governance (iREG): United Kingdom, 2021



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 the UK).
Source: Indicators of Regulatory Policy and Governance Surveys 2017 and 2021, http://oe.cd/ireg.

United Kingdom: Transparency throughout the policy cycle

Inform the public in advance that:	A public consultation is planned to take place	
	Regulatory impact assessment (RIA) is due to take place▲	
	Ex post evaluations are planned to take place	
Consult with stakeholders on:	Draft regulations	
	Evaluations of existing regulations	
Publish online:	Ongoing consultations*	
	Views of participants in the consultation process▲	
	RIAs	
	Evaluations of existing regulations▲	
Policy makers use:	Interactive website(s) to consult with stakeholders▲	
	Website(s) for the public to make recommendations on existing regulations▲	
Policy makers provide a public response to:	Consultation comments▲	
	Recommendations made in *ex post* evaluations■	

All/■Always/▲Yes
Major/■ Frequently
Some/■ Sometimes
Never/▲ No
* Publish on a single central government website.
Note: The data reflects United Kingdom's practices regarding primary laws initiated by the executive.
Source: Indicators of Regulatory Policy and Governance Survey 2021, http://oe.cd/ireg.

United States

Overview and recent developments

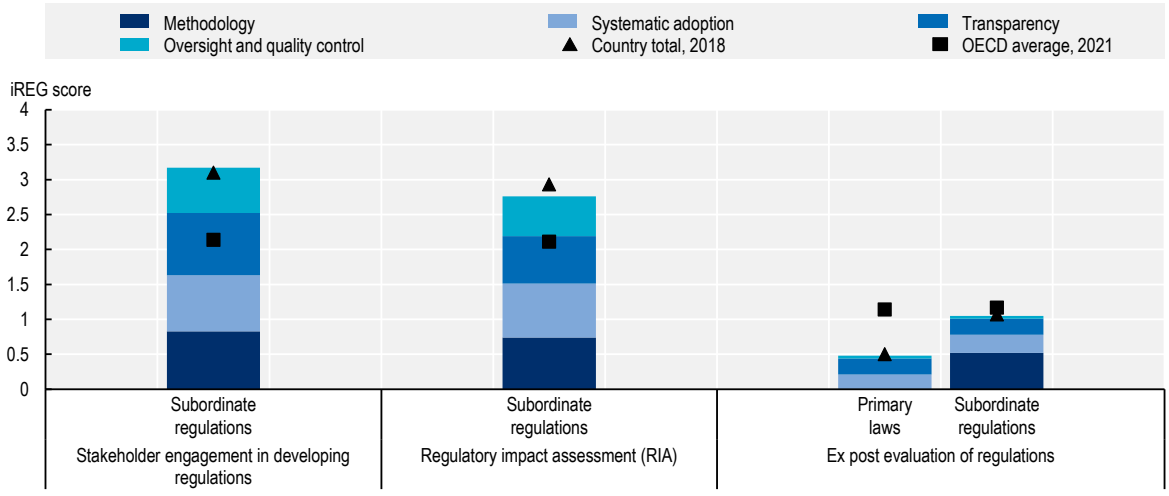
The Administrative Procedure Act governs the rulemaking process in the U.S., requiring agencies to provide public notice and seek comment when proposing new regulations or revising or repealing existing ones. Agencies must consider the comments and in the final rule explain how they addressed significant 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 has been mandatory since 2011. 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.

The Office of Information and Regulatory Affairs (OIRA) located within the Executive Office of the President is the central regulatory oversight body of the United States. It scrutinises the quality of significant regulations and RIAs and can return draft regulations to agencies for reconsideration if their quality is deemed inadequate. OIRA also co-ordinates the application of regulatory management tools across government, reports to Congress on their impacts, provides guidance and training on their use and identifies areas where regulation can be made more effective. Its mandate has been updated to expand OIRA's oversight remit.

The Trump administration included a number of regulatory policy changes. 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. Executive Order 13891 required "economically significant" guidance documents to be subject to formal review and be centrally published. Related *Guidance on Compliance with the Congressional Review Act* empowered OIRA to review independent federal agencies' regulatory actions and rules and related analysis that are not submitted to OIRA through the centralised review process under Executive Order 12866. The Biden administration revoked all of these changes through Executive Order 13992, and issued a memorandum calling for the Office of Management and Budget to undertake a process for modernising regulatory review. The review is expected to include suggestions on how regulatory review processes can promote public health and safety, economic growth, social welfare, racial justice, environmental stewardship, human dignity, equity, and the interests of future generations.

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.

Indicators of Regulatory Policy and Governance (iREG): United States, 2021



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 2017 and 2021, http://oe.cd/ireg.

United States: Transparency throughout the policy cycle

Inform the public in advance that:	A public consultation is planned to take place	
	Regulatory impact assessment (RIA) is due to take place ▲	
	Ex post evaluations are planned to take place	
Consult with stakeholders on:	Draft regulations	
	Evaluations of existing regulations	
Publish online:	Ongoing consultations*	
	Views of participants in the consultation process ▲	
	RIAs	
	Evaluations of existing regulations ▲	
Policy makers use:	Interactive website(s) to consult with stakeholders ▲	
	Website(s) for the public to make recommendations on existing regulations ▲	
Policy makers provide a public response to:	Consultation comments ▲	
	Recommendations made in *ex post* evaluations ■	

All/■ Always/▲ Yes
Major/■ Frequently
Some/■ Sometimes
Never/▲ No

* Publish on a single central government website.
Note: As the executive does not initiate any primary laws in the United States, this data reflects practices regarding subordinate regulations.
Source: Indicators of Regulatory Policy and Governance Survey 2021, http://oe.cd/ireg.

European Union

Overview and recent developments

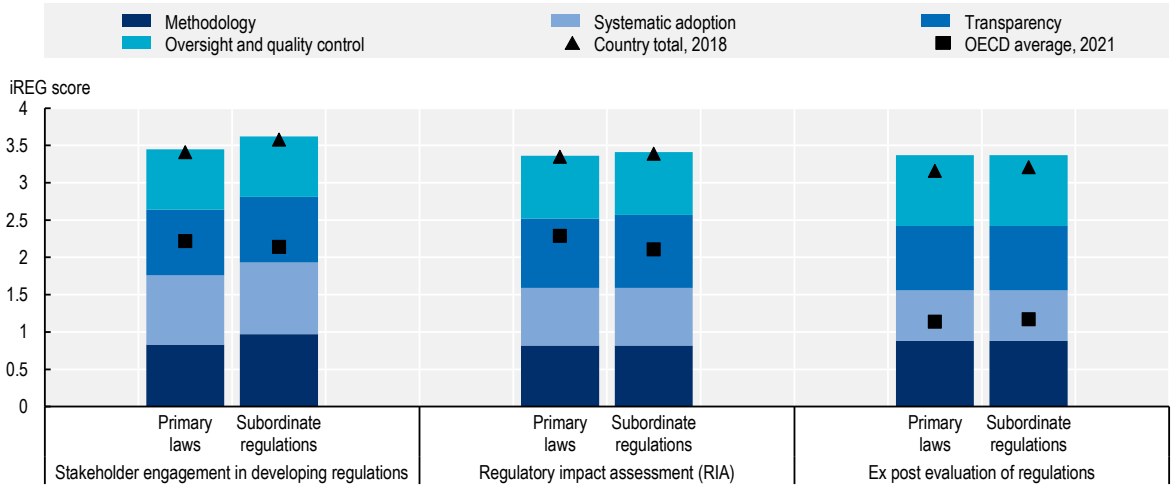
The 2016 Interinstitutional Agreement between the European Commission (EC), the European Parliament and the Council recognised stakeholder engagement, regulatory impact assessment (RIA), and *ex post* evaluation as core elements to improve regulatory quality. The EC is the executive of the European Union (EU). It develops and presents regulatory proposals in accordance with its Better Regulation Toolkit to the European Parliament and the Council for adoption. The Commission announced in the 2021 Policy Communication on Better Regulation to further streamline consultations particularly through the call for evidence, integrate foresight, introduce regulatory offsetting and to require policy makers to provide information about the attainment of long-term goals such as climate change and the SDGs.

The Commission's Secretariat General ensures overall coherence of the Commission's work and oversees compliance with its commitment to Better Regulation and develops its policy. It reviews RIAs, stakeholder engagement processes and *ex post* evaluations, oversees burdern reduction activities, provides capacity support anddraft corporate guidance on better regulation. It also serves as Secretariat to the Regulatory Scrutiny Board (RSB), which consists of three Commission officials and three external experts and is chaired by a Commission's Director General. The RSB checks the quality of all impact assessments and major evaluations and fitness checks. Its mandate was expanded in 2020 to include outreach activities and oversight regarding the one in-one out rule. The RSB's mandate has been enlarged to reflect the European Commission's decision to embed strategic foresight into its working methods, including to inform the design of new initiatives and the review of existing ones. The European Parliament's Directorate for Impact Assessment and European Added Value also reviews RIAs attached to draft legislation submitted by the Commission, and conducts in-depth analysis and impact assessments of amendments at the request of Parliamentary committees. The Council has also developed its capacity to assess impacts of their substantial amendments, but it has not used it so far.

Ex ante impact assessments continue to be carried out for major primary laws and subordinate legislation. Inception Impact Assessments, including an initial assessment of possible impacts and options to be considered, are prepared and consulted on before a full RIA is conducted. Following this initial feedback period, the EC conducts public consultations during the development of initiatives with an impact assessment. Legislative proposals and the accompanying full RIA are then published online for feedback following approval of the proposal by the College of Commissioners. Draft subordinate legislation is consulted on publicly. 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, invites comment on evaluation roadmaps and on the main elements of all evaluations. The RSB now provides quality indicators on evaluations which are made publicly available along with compliance statistics. The Fit for Future Platform brings together representatives of the Commission, Member States and non-government stakeholders, to make suggestions for simplification and review of EU legislation. Indicators below mainly represent practices of the European Commission. The other EU institutions and in particular the Council seems to be lacking behind in terms of the implementation of the 2016 Interinstitutional Agreement.

Indicators of Regulatory Policy and Governance (iREG): European Union, 2021



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 2017 and 2021, http://oe.cd/ireg.

European Union: Transparency throughout the policy cycle

Inform the public in advance that:	A public consultation is planned to take place	
	Regulatory impact assessment (RIA) is due to take place▲	
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Consult with stakeholders on:	Draft regulations	
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Publish online:	Ongoing consultations*	
	Views of participants in the consultation process▲	
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* Publish on a single central government website.
Note: The data reflects European Union's practices regarding primary laws initiated by the executive.
Source: Indicators of Regulatory Policy and Governance Survey 2021, http://oe.cd/ireg.

Annex A. Reader's guide

Most of the data presented in this Outlook, including the composite indicators, are the results of the 2014, 2017 and 2021 Regulatory Indicator 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 that were designed in conjunction with the Measuring Regulatory Performance (MRP) Steering Group on *ex post* evaluation, reflecting the developed normative thinking from the recently published *Best Practice Principles* (OECD, 2020[1]). The Secretariat updated the *ex post* evaluation composite indicator prior to the launch of the survey in 2020. In order to maintain an accurate time series, a limited number of answers from 2014 and 2017 relating to new questions needed to be completed that formed part of the composite indicator for *ex post* evaluation. Questions relating to reviewing the legality of regulations were also revised.

New survey questions have also been added in the areas of regulatory policy and risk as well as coherence across all levels of government. These questions have not been used to develop composite indicators and have a different scope than the other questions in the Regulatory Indicators Survey.

The Regulatory Indicators Surveys gathered information at three points in time: as of 31 December 2014, 31 December 2017, and 1 January 2021. Data for 2014 are from 34 OECD member countries and the European Union whilst data for 2017 are from 36 OECD members and two accession countries (at the time of data collection) as well as the European Union. The 2021 survey collects data from the 38 OECD member countries and the European Union. 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[2]).

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 Chapter 2.

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. The 2021 Regulatory Indicators Survey also includes a range of questions relating to reviewing the legality of regulations, and coherence across all levels of government (Chapter 2), the institutional setup of regulatory policy and oversight (Chapter 3), international regulatory co-operation in line with Principle 12 of the 2012 Recommendation (Chapter 4), as well as risk-based regulation (Chapter 6). 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 Colombia, Costa Rica, Czech Republic, Korea, Mexico, and Portugal where the share of primary laws initiated by the executive is low compared to other OECD member countries.

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[3]). 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/European Union/EC-JRC, 2008[4]). 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.

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OECD Regulatory Policy Outlook 2021

Laws and regulations govern the everyday life of businesses and citizens, and are essential tools of public policy. The COVID-19 pandemic has highlighted the crucial role regulation plays in the economy and society, but has also exposed gaps in domestic and international rule-making that have cost lives and money. The 2021 *Regulatory Policy Outlook*, the third in the series, maps country efforts to improve regulatory quality in line with the 2012 OECD Recommendation on Regulatory Policy and Governance, and shares good regulatory practices that can help close the gaps. It provides unique insights into how countries approach the design, enforcement and revision of regulations, and suggests where countries can best focus their efforts to ensure that laws and regulations work as intended. Finally, it discusses some agile and innovative approaches to rule-making such as regulatory sandboxes, behavioural insights, and outcome-based, data-driven and risk-based regulation.

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