

3. *Toward sound policy formulation and design*

The first step in sound policymaking is properly identifying a problem and designing the right responses to address it. The identification of policy challenges and their incorporation into the public agenda are influenced by multiple factors, including:

- The capacity of representative institutions (for example political parties, trade unions or trade associations) to articulate the challenge;
- The role of the media in translating and communicating the challenge in a way that resonates with citizens;
- The availability of robust data and evidence to enable the government to confirm that the issue is real and that it is up to the government to address it;
- Effective stakeholder-engagement capacity that enables the government to launch and sustain dialogue with relevant civil-society actors and with citizens on the issue and on how to address it successfully; and
- The capacity of the government to anticipate challenges through, for example, strategic foresight, horizon scanning and debates on alternative futures, including with civil society.

Chapter 1 and 2 of this Framework have highlighted governance practices that can support open, equitable and evidence-informed problem identification as a way, inter alia, to avoid the capture of public policies by interest groups. Section 3.2 of this chapter also focuses on the importance of civil servants in having the right analytical skills to define policy problems, notably to detect and understand the root causes of policy challenges.

Once an issue has been correctly identified, defined and framed, policymakers can determine adequate courses of action to solve the problem or implement the reform as the second step of the policy cycle. The first step – the policy formulation stage - is the process by which governments translate long and medium-term policy goals, as well as short-term problems and challenges, into concrete courses of action. This process provides an opportunity for governments to share the policy-formulation process with citizens, business and CSOs, to innovate and deliver improved public service outcomes. Examples of co-production and co-decision making range from referenda to consultation processes in which the course of action is developed and deliberated with a wide range of stakeholders and representative groups (OECD, 2011). As explained in chapter 2, engaging stakeholders can also constitute a key factor to avoid policy capture during the policymaking process. The outputs of this process can for instance be draft legislation, regulation, resource allocations or roadmaps and frameworks for future negotiations on more detailed plans. In an ideal setting, policy formulation therefore includes the identification, assessment, discussion and drafting of policy options to address societal needs and challenges.

One essential part of the formulation stage is the policy design, which deals with planning of the implementation stage (Howlett, 2014). This implies that the government – and in particular, elected officials and senior management - decides based on a broad range of political and technical input which tools and instruments they intend to use, and what financial and human resources they should allocate. Translating these visions and plans into achievable policies constitutes one of the greatest challenges in policy-making. Decision makers usually have to choose among a wide array of options provided by an

increasing range of policy advisors, from civil servants to such external actors as lobbying firms, private sector representatives, advisory or expert groups, NGOs, think tanks, academia, or political parties among others stakeholders. For instance, evidence from advisory bodies operating at arms' length from government are playing and increasing role in policymaking and can constitute enablers for inclusive and sound policymaking (OECD, 2017c).

Analysing and weighing the political, economic, social and environmental benefits and costs of different policy actions thus forms the core of the policy cycle's formulation phase. For instance, OECD evidence suggests that without a proper governance framework, public decisions and regulations are more prone to be influenced or captured by special interests (OECD, 2017a)¹⁵. Moreover, lack or limited budget, human and technological capacities, shortcomings of the institutional framework or inadequate regulations are a few of the numerous "design" barriers that consequently hamper efficient policy implementation and service delivery. For instance, when governments face crises or unexpected challenges, they can turn to the creation of regulations or the injection of funds without having a concrete knowledge of the longer-term impact of these instruments, nor of whether other, simpler and more efficient options could solve the problem.

Having identified some of these barriers over the past decades, the OECD has pursued specific work in the governance of (1) management tools and (2) policy instruments that can enhance the quality of policy formulation and design.

To ensure the effectiveness of, and support for, the course of action chosen by decision-makers, it is important that stakeholders perceive the policy action as valid, efficient and implementable. Thus, the policy formulation and design stage represents an opportunity for policymakers to ensure that practices associated with public governance values and principles are adopted, mainstreamed and integrated into the implementation process. Only when these governance values and principles are embedded as part of the policy formulation phase can their impact be maximised at later stages of the policy cycle. In addition to the practices that will be highlighted in this chapter, successful practices and aspirations regarding mainstreaming of governance values are codified in the OECD Recommendation of the Council on Digital Government Strategies (2014), the revised Recommendation on Promoting Good Institutional Practices for Policy Coherence for Development (2010) – which is under the responsibility of the Development Assistance Committee¹⁶ - as well as the Recommendation on Public Integrity (2017), the Recommendation on Open Government (2017), and the Recommendation on Gender Equality in the Public Life (2015) as discussed in chapter 1 of this Framework.

3.1. Management tools for policy formulation and design

Throughout all stages of the policy process, policymakers use **management tools** to pursue desired outcomes. In the policy formulation and design stage, management tools can affect the quality of policy outcomes, as they constitute means to enhance public sector skills and capacity for policy design. Moreover, they can serve as direct channels for policy implementation such as is the case of digital learning platforms. Some of key management

¹⁵ <http://www.oecd.org/cleangovbiz/toolkit/49256979.pdf>

¹⁶ As part of the OECD-wide Standard Setting Review, the Development Assistance Committee agreed to update the Recommendation of the Council on Good Institutional Practices in Promoting Policy Coherence for Development.

tools to improve the quality of policy design and therefore, shape policy outcomes are (1) **strategic planning**, (2) **skills for developing policy**, (3) **digital capacities** and (4) **public procurement** as a strategic lever to pursue outcomes.

3.1.1. Strategic planning

A well-embedded planning practice can be instrumental in translating political commitments and ambitions into both long/medium-term strategies and operational action plans to guide the work of government in pursuing these commitments. This takes on added importance in the context of countries engaged in adapting and pursuing the Agenda 2030 SDGs within their national circumstances. In this respect, evidence points to the following:

- Prioritisation should be an important part of the early stages of policy formulation, based on the problem-identification. Governments usually do not have resources to address all problems (at once, at least). Prioritisation can lead to realistic commitments, well-designed interventions, that can help governments to develop more credible plans and hence may add to enhanced trust in institutions and sequencing.
- In this regard, planning needs to be systematic, by defining priorities, ensuring alignment between various plans as well as by aligning the policy objectives to the financial resources of the state:
 - Strategic planning needs to align long-, medium- and short-term policy priorities towards a common goal;
 - Strategic planning needs to ensure that policy instruments such as budgeting, regulations and workforce planning are oriented towards this strategy.
 - Indeed planning should to be linked with the budgeting process. Principle 2 of the OECD Recommendation on Budgetary Governance (2015) aims to help policymakers use budget as a substantial policy instrument to achieve medium-term strategic priorities of the government, including those reflecting the SDGs. When considering budgetary action as a policy instrument, policymakers have to organise budget allocations in a way that enables the government to pursue its government-wide strategic development goals - its national policy objectives and deliverables for development codified in its national strategic documents through effective spending decisions on financial resource allocation and execution.
- Recent experiences in OECD countries show that when the planning process is open and includes stakeholder engagement, such as citizen-driven approaches through citizen participation mechanisms, strategic planning can enhance the legitimacy of policymaking as well as constitute an effective tool for the sustainability of policies beyond the electoral cycle (OECD, 2016).

3.1.2. Skills for developing policy

The OECD highlights a set of skills for a high-performing civil service: (1) skills for policy development, (2) skills for citizen engagement and service delivery, (3) skills for commissioning and contracting, and (4) skills for managing networks.

The skills for developing policy are particularly important for the policy formulation stage. Those are the combination of traditional aptitudes, such as the capacities for providing evidence-based and balanced and objective advice while withstanding political and partisan pressure to act in certain ways, with a new set of skills to meet expectations for digital, open and innovative government, technological transformations and the increasingly complexity of multidimensional policy challenges. Policymakers need to know when and how to deploy institutional and administrative tools for policy formulation and design. Hence, OECD evidence suggests the importance of developing professional, strategic and innovation skills for:

- **Defining policy problems:** civil servants need to be capable of detecting and understanding the root causes of policy challenges. This requires “analytical skills that can synthesise multiple disciplines and/or perspectives into a single narrative” (OECD, 2017)¹⁷. This includes the capacity to interpret and integrate different and sometimes conflicting visions correctly, and to refocus and reframe policies. This also includes networking and digital skills to identify the right stakeholders and the right experts outside the civil service for engagement in policy formulation.
- **Designing Solutions:** civil servants need the skills to understand potential future scenarios, and find resilient solutions to future challenges. These might include foresight skills and systems and design thinking to understand and influence the interactions among internal and external stakeholders and reconcile different sector expertise. They need to be able to identify and harness internal and external resources to facilitate the refining and implementation of the solution. They need to understand what has worked in the recent past and identify best practice that can be adapted to current problems.
- **Influencing the policy agenda:** civil servants need the skills to understand the political environment and identify the right opportunities to move forward with policy initiatives. This requires judgement skills to provide timely advice, recognise and manage risk and uncertainty, and design policy proposals in a way that responds to the political imperatives of the moment. Moreover, skills for communicating policy ideas, such as visual presentations and storytelling, can be central for the interaction with political/elected decision-makers.

The forthcoming OECD recommendation on Public Service Leadership and Capability recommends that Adherents invest in public service capability in order to develop an effective and trusted public service, with the appropriate skills to ensure policy capacity and effective sound public governance. This includes specific principles and guidance to:

- Continuously identify skills and competencies needed to transform political vision into services which deliver value to society;
- Attract and retain employees with the skills and competencies required from the labour market;
- Recruit, select and promote candidates through transparent, open and merit-based processes, to guarantee fair and equal treatment;

¹⁷ OECD (2017), Skills for a High Performing Civil Service, OECD Public Governance Reviews, OECD Publishing, Paris, <https://doi.org/10.1787/9789264280724-en>

- Develop the necessary skills and competencies by creating a learning culture and environment in the public service;
- Assess, reward and recognise performance, talent and initiative.

3.1.3. Digital capacities

In order to allow relevant stakeholders to collaborate actively with policymakers in the formulation of public policies, the government's digital capacities are pivotal. New technologies and digital progress allow a more meaningful and participatory stakeholder engagement to collaborate in the design of policies. Governments are not only confronted with the challenge to introduce digital technologies into public administrations; but also with the integration of digital means into public sector modernisation efforts. "Public sector capacities, workflows, business processes, operations, methodologies and frameworks need to be adapted to the rapidly evolving dynamics and relations between the stakeholders that are already enabled – and in many instances empowered – by the digital environment." (OECD Recommendation on Digital Government Strategies).

However, often governments are not yet sufficiently equipped to make use of digital innovations and new technologies. Digital progress and its impact on enhancing the capacity to guide or steer the policy process require governments to assess on a regular basis their digital capacities so that these can be adjusted to reflect the vagaries of a constantly changing digital environment.

The OECD Recommendation on Digital Government Strategies (2014) helps governments adopt more coherent and strategic approaches for "digital technologies use in all areas and at all levels of the administration" that stimulate more open, participatory and innovative administrations and that are aligned with governments' own digital capacities. In order to develop and implement digital government strategies, the Recommendation suggests that governments:

- Ensure greater transparency, openness and inclusiveness of government processes and operations (Principle 1);
- Encourage engagement and participation of public, private and civil society stakeholders in policy-making and public services design and delivery (Principle 2).

Core questions for consideration by governments

- Does your government have in place a robust multi-year strategic planning framework? Does this framework link strategic plans together and with the national budget?
- Has your government undertaken specific measures to build civil service skills for policy formulation and design (e.g. through recruitment, promotion and training frameworks)?
- Has your government established a legal or policy framework to facilitate the use of ICT as a mean to foster engagement and more participatory approaches in decision-making and the service design and delivery process?
- Does your government evaluate the efficiency of its public procurement system?

Additional resources

OECD legal instruments:

- [OECD Recommendation of the Council on Digital Government Strategies \(2014\)](#)
- [OECD Recommendation of the Council on Regulatory Policy and Governance \(2012\)](#)
- [Draft OECD Recommendation of the Council on Public Service Leadership and Capability \(forthcoming\)](#)
- [OECD Recommendation of the Council on Promoting Good Institutional Practices for Policy Coherence for Development \(2010\)](#)¹⁸

Other relevant OECD tools:

- OECD Public Governance Review: Skills for a High Performing Civil Service (2017)
- OECD Public Procurement Toolbox (2016)
- SIGMA Strategy Toolkit (2018)

References

OECD (2016), Open Government: The Global Context and the Way Forward, OECD Publishing, Paris, <https://doi.org/10.1787/9789264268104-en>

3.2. The strategic use of policy instruments

During the problem-identification and policy-formulation phase policymakers not only have to decide what to do in setting the objectives they aim to achieve, they need to consider how best to address the problem by deliberating about costs and effects of proposed solutions. As part of this process, policymakers have to decide which substantial policy instruments can best be deployed to address a problem and implement a solution. Substantial policy instruments or tools are “the actual means or devices that governments make use of in implementing policies” (Howlett, 2009). In the area of public governance, the OECD highlights the importance of **the policy instruments of budgeting and rule-making** to ensure that policies can meet the desired objectives and new challenges in as efficient as possible.

3.2.1. Regulatory policy and governance

A central policy instrument used by governments to intervene in economic matters and steer societal development are regulations. Policymakers can use regulation as an instrument, by imposing binding rules or limiting access to certain benefits and/or

¹⁸ As part of the OECD-wide Standard Setting Review, the Development Assistance Committee agreed to update the Recommendation of the Council on Good Institutional Practices in Promoting Policy Coherence for Development

advantages directly or indirectly. When they are proportionate, targeted and smart they can improve social, economic and environmental conditions.

The 2008 global financial and economic crisis and its underlying failings in governance and regulation have shown the importance of regulatory policy as an instrument for sound policy-making. A “well-functioning national regulatory framework for transparent and efficient markets is central to re-injecting confidence and restoring [economic] growth” (Recommendation on Regulatory Policy and Governance, 2012). Moreover, sound regulations can eventually help policymakers meet fundamental social objectives in areas such as health, social welfare or public safety and represent an important instrument to master environmental challenges.

However, adopting the right regulations as an instrument to solve policy problems is a continuously demanding task. Policy-makers have to evaluate if regulation is necessary and to what extent means other than regulation could be more effective efficient to achieve policy objectives. To help governments implement and advance regulatory practice that meets stated public policy objectives, the Recommendation on Regulatory Policy and Governance (2012):

- Provides governments with clear and timely guidance on the principles, mechanisms and institutions required to improve the design, enforcement and review of their regulatory framework to the highest standards;
- Advises governments on the effective use of regulation to achieve better social, environmental and economic outcomes; and
- Calls for a “whole-of-government” approach to regulatory reform, with emphasis on the importance of consultation, co-ordination, communication and co-operation to address the challenges posed by the inter-connectedness of sectors and economies”.

Being the first comprehensive international statement on regulatory policy since the financial crisis, the Recommendation advises policymakers on regulation design and quality during the policy formulation phase. The Recommendation highlights the importance of the public-governance values associated with open government, including transparency and participation in the regulatory process “to ensure that regulation serves the public interest and is informed by the legitimate to needs of those interested in and affected by regulation”.

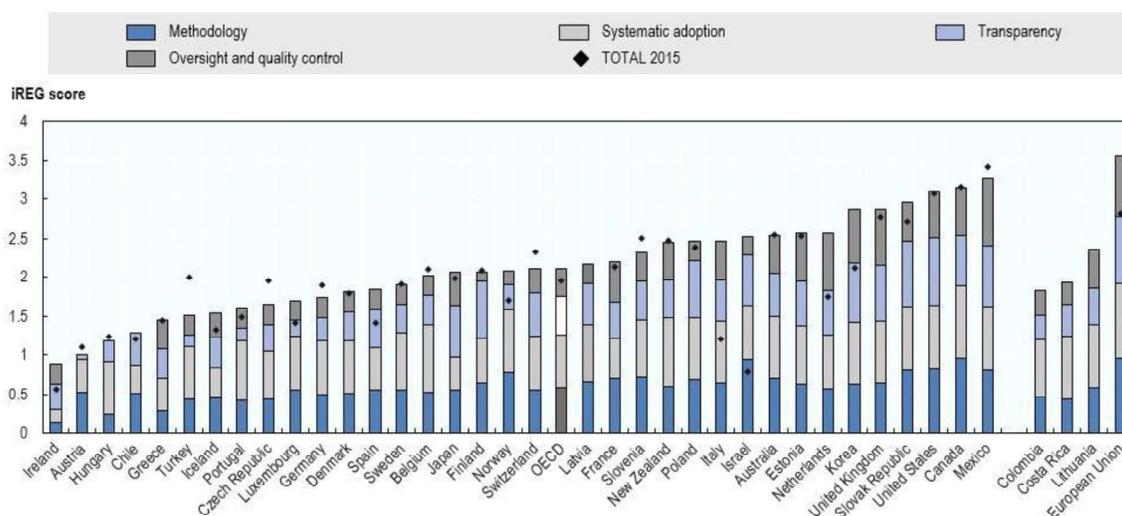
Transparency can positively add to the accountability of policymakers and increase citizens’ trust in the regulatory framework. The Recommendation stresses the role of public consultations to engage stakeholders both in the drafting process of regulatory proposals and in ensuring the quality of the supporting analysis. Consultation and engagement eventually improve the transparency and quality of regulations through the collection of ideas, information and evidence from stakeholders regarding public policy-making.

External consultation is a crucial element to avoid that regulators are subjected to one-sided influences, especially during the formulation phase and therefore to ensure that regulators act in the public interest and serve social cohesion. The OECD Recommendation on Public Integrity further highlights the importance of levelling the playing field by granting all stakeholders – in particular, stakeholders with diverging interests – access in the development of public policies. This requires instilling integrity and transparency in lobbying activities and political financing. Overall, transparency and stakeholder engagement (also as part of Open Government, which is discussed in Section 1.2) can

further reinforce trust in government, strengthen the inclusiveness of regulations and help to increase compliance with regulations by developing a sense of ownership. The Recommendation therefore recommends adherence to “principles of open government, including transparency and participation in the regulatory process to ensure that regulation serves the public interest and is informed by the legitimate needs of those interested in and affected by regulation.”

The majority of OECD countries have adopted stakeholder-engagement practices for the development of regulations. They use various forms of engagement, ranging from public online consultation to informal participation mechanisms. Countries with the highest scores of stakeholder-engagement in developing regulations have for instance adopted frameworks to open consultation processes to all parties interested and to disclose all stakeholder comments as well as government responses (see Figure 8).

Figure 8. Stakeholder engagement in developing subordinate regulations, 2018



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

Source: Indicators of Regulatory Policy and Governance Surveys 2014 and 2017, <http://oe.cd/ireg>

In order to assess benefits, costs and effect of different regulatory and non-regulatory solutions during the policy formulation stage, **ex ante Regulatory Impact Assessment (RIA)** offers policymakers a key instrument to achieve the best response to specific policy problems. OECD experience has shown that conducting ex ante RIA improves the governments’ capacity to regulate efficiently and enables policymakers to identify the policy solution that is most suitable to reach public policy goals.

RIA can help increase policy coherence by revealing regulatory proposals’ trade-offs and identifying potential beneficiaries of regulations. In addition, RIA can also add to a more evidence-informed policy-making and help prevent regulatory failure due to unnecessary regulation, or lack of regulation when regulatory policy would be required. The collection of evidence through the RIA process can enhance the accountability of policy decisions at

the formulation phase. Furthermore, external oversight and control bodies such as Supreme Audit Institutions (SAIs) can verify whether a coherent, evidence-based and reliable RIA accompanied the drafting of regulations (OECD, 2017a). The OECD Recommendation on Public Integrity emphasises their crucial role in promoting accountable public decision-making.

All OECD countries have adopted formal requirements and developed methodologies for conducting RIA (OECD, 2018). In the ideal case, RIA should not only assess the potential costs and benefits of regulatory proposals, but also try to determine other impacts such as compliance and enforcement issues regulatory decisions might have.

Based on these practices, the OECD Recommendation on Regulatory Policy and Governance suggests governments “integrate Regulatory Impact Assessment (RIA) into the early stages of the policy process for the formulation of new regulatory proposals” and offers guidance for the design and implementation of assessment practices. In addition, as highlighted in chapter 5, countries are progressively moving toward the ex post review of their regulatory stock not only to improve their efficiency and quality but also as a way to enhance the development of new regulations.

3.2.2. Budgetary Governance

The other policy instrument for sound public governance is budgeting. The Budget reflects a government’s policy priorities and translates political commitments, goals and objectives into decisions on the financial resources to be allocated to pursue them, and on how these financial resources are to be generated¹⁹. It enables the government to establish spending priorities related to the pursuit of its strategic objectives and to proceed with a sequencing of initiatives that takes into account the availability of financial resources as defined in the fiscal framework. As mentioned above, governments are more systematically aligning planning priorities with spending priorities by ensuring greater linkages between planning and budgeting. This ensures that the government can pursue its strategic development objectives for the country by assigning financial resources through the national budget to reach them. This also enables the government to measure the impact of spending on the achievement of these development goals.

Through budget allocation policymakers can strategically encourage or discourage particular courses of action. Government spending can, for instance, influence the provision of services or infrastructure in case of market imperfections or failure in areas such as public health or environment protection and serve as leverage to encourage private investment and innovation. Moreover, public expenditure can positively contribute to spatial, social and economic cohesion. Through budget decisions, policymakers can also help discourage certain economic or private behaviour through the use of such fiscal instruments as taxes, tariffs, duties and charges.

Given its central importance for public governance and policy-making, the OECD has developed the OECD Recommendation on Budgetary Governance (2015), which focuses on “the processes, laws, structures and institutions in place for ensuring that the budgeting system meets its objectives in an effective, sustainable and enduring manner” (OECD, 2015).

¹⁹ Taxation (and tax administration) is a distinct policy instrument under budgetary governance, but they have different impacts and relevance. The next draft of the Policy Framework will present these separately from Budgeting and Regulating in this chapter as key governance instruments.

Figure 9. The ten principles of good budgetary governance



Source: OECD Recommendation of the Council on Budgetary Governance (2015)

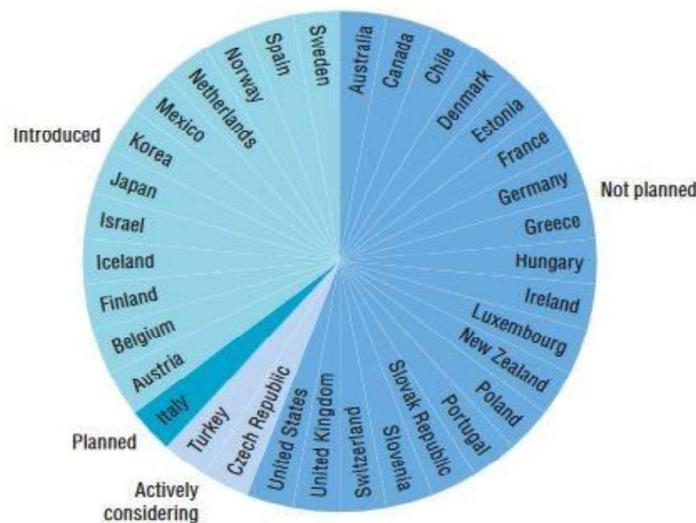
Providing a concise overview of good budgetary practices, this Recommendation contains ten principles that can serve as guidance for policymakers to make use of the budget system to achieve policy objectives and meet the challenges of the future. In addition to the aforementioned principle 2 (on linking budgeting with national priorities), three principles are of particular importance for the policy formulation phase:

- **Principle 3** of the Recommendations calls upon governments to design the capital **budgeting framework in a way that it supports meeting national development needs in a cost-effective and coherent manner**. How governments prioritise, plan, budget, deliver, regulate and evaluate their capital investment is essential to ensure that infrastructure projects meet their timeframe, budget, and service delivery objectives.
- **Principle 4** of the Recommendation points to the importance of ensuring that **budget documents and data are open, transparent and accessible**. Only with clear, factual budget reports that inform the stage of policy formulation, policymakers can take sufficiently informed budget decision to address policy problems. All budget information should further be presented in comparable format to discuss policy choices with citizens, civil society and other stakeholders to promote effective decision-making and accountability.
- **Principle 5** recommends policymakers to provide for an **inclusive, participative and realistic debate on budgetary choices** that need to be made in the general public interest. Engagement with parliaments, citizens and civil society

organisations in a realistic debate about key priorities, trade-offs, opportunity costs and value for money can increase the quality of budgetary decisions. But public engagement also required the provision of clarity about relative costs and benefits of the public expenditure programmes and tax expenditures.

The policy formulation phase also allows for an application of inclusive measures, such as gender mainstreaming in the budgetary process. Adopting a gender perspective with regard to budget decisions, by making use of special processes and analytical tools, can help to promote gender-responsive policies that address existing gender inequalities and disparities. The 2016 OECD Survey on Gender Budgeting has shown that one third of the OECD countries (12 countries) had already introduced and adopted gender mainstreaming in the budget process.

Figure 10. Status of gender budgeting, 2016



Source: OECD (2016), *Survey of Gender Budgeting*, OECD, Paris

Reflecting **environmental considerations in budget documents** and fiscal frameworks, including the annual budget, can help governments to ensure financing and implementation of policies to attain their environmental objectives. By ensuring that national expenditure and revenue processes are aligned with goals on climate and environmental policies, governments can, moreover, increase the accountability of their commitments and move towards environmentally sustainable development as stipulated by the Paris Agreement on climate change and the UN Sustainable Development Goals.

Core questions for consideration by governments

- Has the government established policies, institutions and tools to ensure the quality and coherence of regulatory processes (e.g. the design, oversight and enforcement of rules in all sectors)?
- Has the government established institutions and tools to ensure the involvement of stakeholders in the policy formulation process (with informing affected parties

about the policy intentions and embedding an interactive dialogue with stakeholders in the process)?

- To what extent are regulatory impact assessments used to evaluate the wider impacts and consequences of regulations, including on the competition, SMA and investment climate?
- Does your government ensure the alignment of the annual budget, its multi-year budget frameworks as well as its capital-expenditure planning with strategic policy objectives, such as national development plans or the SDGs, that have a long-term planning horizon? Does this alignment include setting annual or pluri-annual targets at the institutional level?
- Has your government established mechanisms to discuss the budget with stakeholders such as citizens and civil society organisations during the budget-setting process?
- Has your government implemented - or is planning to implement - specific policies for the development of a gender perspective on budget decisions?
- Has your government implemented – or is planning to implement – specific policies to reflect environmental considerations in the budget documents and fiscal frameworks?

Additional resources

OECD legal instruments:

- [Recommendation of the Council on Budgetary Governance \(2015\)](#)
- [Recommendation of the Council on Regulatory Policy and Governance \(2012\)](#)
- [Recommendation of the Council on Improving the Quality of Government Regulation \(1995\)](#)
- [OECD Recommendation on Public Integrity \(2017\)](#)

Other relevant OECD tools:

- OECD CleanGovBiz Toolkit “Regulatory Policy: Improving Governance” (2012)
- Budget Transparency Toolkit
- OECD Best Practice Principles on Stakeholder Engagement in Regulatory Policy (forthcoming)
- OECD Framework for the Governance of Infrastructure (2017)
- OECD Principles for Public Governance of Public-Private Partnerships (2012)
- OECD Regulatory Policy Outlook (2018)

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