



OECD Working Papers on Public Governance No. 19

Strengthening
the Institutional Setting
for Regulatory Reform: The
Experience from OECD
Countries

**Cesar Cordova-Novion,
Stephane Jacobzone**

<https://dx.doi.org/10.1787/5kgglrpscph-en>

OECD WORKING PAPERS ON PUBLIC GOVERNANCE

No. 19

STRENGTHENING THE INSTITUTIONAL SETTING FOR REGULATORY REFORM THE EXPERIENCE FROM OECD COUNTRIES

Cesar Cordova-Novion
Stéphane Jacobzone



ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT

The OECD is a unique forum where governments work together to address the economic, social and environmental challenges facing them. The Organisation is also at the forefront of efforts to understand and help governments respond to new developments and concerns, such as corporate governance, the information economy and the implications of an ageing population. The OECD provides a setting where governments can compare policy experiences, seek answers to common problems, identify good practice, and work to co-ordinate domestic and international policies.

The OECD member countries are: Australia, Austria, Belgium, Canada, Chile, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea, Luxembourg, Mexico, the Netherlands, New Zealand, Norway, Poland, Portugal, the Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Turkey, the United Kingdom and the United States. The European Commission takes part in the work of the OECD.

Issued under the responsibility of the Secretary-General of the OECD. The opinions expressed and arguments employed herein do not necessarily reflect the official views of the OECD member countries.

ABSTRACT

This Working Paper analyses the institutional setting for regulatory reform. It is the first comprehensive analysis of regulatory oversight bodies. The analysis adopts a functional approach through four core functions: *i*) oversight of the rule-making process; *ii*) assisting rule makers in their evidence-based analysis; *iii*) challenging the quality of regulatory proposals; *iv*) advocating for quality/better regulation. The report analyses the key factors contributing to success, as well as elements for the credibility of regulatory oversight. The report also finds that regulatory quality oversight represents a tool for policy coherence for countries and needs to be articulated with other core policies, such as microeconomic and competition-oriented reforms, as well as overall reforms of the public administration. Forging of a political constituency requires active communications, political buy-in and support from a champion, and an external constituency of interested parties to support advocacy. The report concludes with a possible checklist for policy makers interested in consolidating regulatory oversight in their respective national settings.

Note: Stephane Jacobzone is a senior economist, OECD Regulatory Policy Division; Cesar Cordova-Novion, Consultant, Jacobs and Associates. The authors would like to thank Vaclav Graf for outstanding research assistance. They would like to thank the following OECD staffs for their comments: in the OECD Public Governance and Territorial Development Directorate: Miriam Allam, Gregory Bounds and Josef Konvitz. The authors would also like to thank the network of national delegates and experts who provided feedback and inputs. The report was prepared by Jennifer Stein.

ACRONYMS

ACTAL	Administrative Board for Administrative Burdens (Netherlands)
AMA	Agency for Administrative Modernisation (Portugal)
BCC	Business Cost Calculator (Australia)
BRU	Better Regulation Unit (UK)
BRC	Better Regulation Commission (UK)
CEJUR	Secretary of State for the Presidency of the Council of Ministers/Centro Juridico (Portugal)
COAG	Council of Australian Governments
COFEMER	Federal Commission for Regulatory Improvement (Mexico)
COG	Centre of Government
CORE	Centre for Regulatory Expertise (Canada)
CRR	Council for Regulatory Reform (Japan)
DCCA	Danish Commerce and Companies Agency
DDCA	Better Business Regulation Division (Denmark)
DEBR	Directors and Experts on Better Regulation
DPD	Deregulation Policy Division, Australia
GAO	General Accountability Office (U.S.)
IAB	Impact Assessment Board (European Commission)
MIC	Ministry of Internal Affairs and Communications (Japan)
NAFTA	North America Free Trade Association
NAO	National Audit Office (UK)
NNR	Board of Swedish Industry and Commerce for Better Regulation
NRCC	National Regulatory Control Council (Germany)
OBPR	Office of Best Practice Regulation (Australia)
OIRA	Office of Information and Regulatory Affairs (U.S.)
OLDP	Office of Legislative Drafting and Publishing
OMB	Office of Management and Budget (U.S.)
RIA	Regulatory Impact Analysis
RPC	Regulatory Policy Committee (UK)
RRAC	Risk and Regulation Advisory Council (UK)
RRC	Regulatory Reform Committee (Korea)
SCM	Standard Cost Model
SEMA	State for Administrative Modernisation (Portugal)
SEPCM	Secretary of State for the Presidency of the Council of Ministers (Portugal)
TBC-RAS	Regulatory Affairs Sector in the Treasury Board of Canada Secretariat (Canada)
USQR	Unit for Simplification and Better Regulation (Italy)

TABLE OF CONTENTS

EXECUTIVE SUMMARY	6
INTRODUCTION	7
I. THE FUNCTIONS OF REGULATORY OVERSIGHT BODIES: AN ANALYTICAL FRAMEWORK	9
Four core functions	9
Constitutional and structural aspects.....	13
Towards a typology of regulatory oversight bodies.....	18
II. KEY FACTORS CONTRIBUTING TO THE SUCCESS OF REGULATORY QUALITY OVERSIGHT.....	21
Mandate and powers	21
Establishing an organisation and distributing powers.....	27
Institutional design and location	34
Human and financial resources	41
Co-ordination mechanisms within and across jurisdictions.....	43
III. ASSESSING THE PERFORMANCE OF REGULATORY OVERSIGHT INSTITUTIONS.....	48
Policy coherence and co-ordination	49
Ensuring institutional stability	51
Adaptability and responsiveness.....	52
Strategies and approaches for implementation	53
Forging a political constituency, communicating with stakeholders and the broader public	54
CONCLUSION	57
BIBLIOGRAPHY	62
ANNEX	65

List of tables

1. Core functions and typical tasks of oversight Bodies	10
2. Overview of regulatory oversight bodies in selected OECD countries	19
3. Key functions of regulatory oversight bodies in selected OECD member countries.....	32
4. Autonomy vs. organisational setting	38
A.1. Regulatory oversight bodies in selected OECD member countries, functions and responsibilities	65
A.2. Regulatory oversight bodies in selected OECD member countries, governance and statutes	72
A.3. Regulatory oversight bodies in selected OECD member countries, co-ordination mechanisms	78

List of figures

1. Ministerial responsibilities for regulatory policy	25
2. Bodies charged with advisory and advocacy functions across OECD member countries	29
3. Institutional arrangements to promote regulatory policy (Part 1)	34

EXECUTIVE SUMMARY

Stronger governance and regulatory oversight plays a key role in the new agenda for regulatory policy moving towards regulatory governance; and involving a focus on openness and transparency. As a result, OECD countries have been strengthening the institutional setting for regulatory reform, adopting policies to maximise the efficiency and effectiveness of regulation through transparency, accountability and evidence-based analysis.

The report sheds new light on this crucial dimension of regulatory reform, with the first comprehensive analysis of the set of units, councils, committees, centres, department offices and other entities in charge of improving the quality of regulation. The analysis offers for a better understanding of the challenges, and options that country face when setting up institutional arrangements for regulatory through a functional approach. Oversight bodies perform one or more of the following four core functions: *i) oversight of the rule-making process; ii) assisting rule makers in their evidence-based analysis; iii) challenging the quality of regulatory proposals, iv) advocating for quality regulation/ better regulation.*

The report analyses the key factors contributing to success of regulatory oversight, including the mandate, powers, structure, location, resources and co-ordination mechanisms. The findings are as follows:

- Oversight bodies are generally *located close to core executive functions*: either at the centre of government itself, or as part of central ministries. Despite significant institutional heterogeneity, *a key issue for success is the existence of a structured unit or dedicated secretariat*. It can be set up within the executive, or as a Council/Committee as part of an arms' length arrangement.
- *The credibility of the core unit builds on technical expertise and political support, and is important to ensure coherence, leadership and efficiency*. In some countries, the core functions of oversight remain divided among different institutions, with implications for coordination.
- *The system of regulatory oversight involves checks and balances*, and often includes opt-out exemptions and time limits. A constant concern is to minimise infringements to ministerial responsibilities, while ensuring commitment at the political level. A balanced approach is necessary, so that no significant loopholes can undermine regulatory quality oversight, such as omitting tax issues, or checking only part of the new regulations. Transparency and accountability mechanisms are required.
- *Countries increasingly tend to adopt networked approaches for regulatory oversight*. A core body, enjoying direct explicit or indirect implicit powers, coordinates a network of units in the various ministries. This contributes to policy coherence, while ensuring the interface with policy-making in sectoral areas. The units collaborate and complement each other in a dynamic way when fulfilling the core functions. While decentralising the substantive work helps to foster change in the sectoral areas, this also entails issues in terms of balancing powers and priorities.

An analysis of the performance of regulatory oversight offers key insights from a political economy of reform perspective. *Regulatory quality oversight is a key tool for policy coherence*, and benefits in turn from internal coherence in the reform agenda. Regulatory oversight needs to be articulated with other core policies, such as microeconomic and competition-oriented reforms, as well as overall reforms of the public administration. This may help to overcome bureaucratic resistance and scepticism. Oversight bodies require *institutional stability over time* to sustain the changes that transform “quick wins” into real outcomes. This needs to be reflected through recruitment and resource endowment across economic and political cycles. Countries face different options for reform, *between gradual approaches, or more “big bang” strategies*. Gradualism helps to adapt progressively the rulemaking environment, starting simple and raising standards through innovation over time. Big bang approaches have often been chosen during crises, with significant opportunities for reform. *Forging of a political constituency* requires active communications, political buy in and support from a champion, and an external constituency of interested parties to support advocacy.

The report concludes with *a possible checklist for policy makers* interested in consolidating regulatory oversight in their respective national settings.

INTRODUCTION

“Regulation can solve social problems, but can also impose its own problems. Wherever states deploy regulation, demand also arises for oversight of the regulatory system to reduce the costs and side effects of regulation, promote efficiency in standard-setting and instrument choice, encourage consistency and transparency, and improve the overall social outcomes of regulation” (OECD, 2008b). Since the mid-1980s, OECD member countries have been engaged in an intense effort to build institutions responsible for over-seeing and enforcing the key control function of the state. These institutions, known as regulatory oversight bodies in the context of the current report have therefore become an integral part of regulatory reform programmes in many countries.

The role played by these institutions in the reform policy debate is rather new. Many reform thinkers and practitioners have come to realise that a purely technocratic approach to change based on advocating more inputs or new tools rarely succeeds. Resources and processes are necessary, but not sufficient, to build traction and create incentives for long-term sustainable reform. Fortunately, the institutional-based approach to development has made impressive progress in clarifying a wide array of problems, barriers, situations and dysfunctional aspects affecting the business environment and the regulatory management of a country. Studies have emphasised the roles played by broad agreements such as democratic rules, contracts, property rights, procedural checks and balances, and formal and informal rules facilitating market economy. Importantly, the debate has moved recently to examine how regulatory institutions and frameworks significantly affect the functioning of markets and governments.

There is still little understanding on what specific institutional setup– or more precisely, governance mechanisms to prepare new rules and shape regulatory regimes – should be in place to offer the performance in a specific context. For example, high levels of income and wealth have been achieved among advanced economies under a range of institutional structures – including various legal and regulatory approaches, and different degrees of state involvement in the economy.

On the other hand, the diffusion of oversight bodies over recent years has produced a wealth of experience and information about how these institutions are better equipped to create the adequate environment and right mix of incentives to drive and implement a policy. This report assesses the opportunities to draw lessons from this experience.

Previous OECD reports have underlined the important dimension of a regulatory policy. The 2002 OECD Flagship Report *Regulatory Policies in OECD Countries: From Interventionism to Regulatory Governance* started to analyse the specific institutional dimension in new set-ups brought forward by governments to take forward the regulatory policy agenda, mostly in the 1990s (OECD, 2002b, Chapter 6). In 2007-08, the analysis was further developed in a study on the advocacy dimension, and its role to facilitate reform implementation (OECD, 2008b, Chapter 3; OECD, 2008a). The current report builds on a wide set of recent and ongoing OECD reviews covering a number of countries in Europe, as part of the review of regulatory management capacity in 15 EU Member states,¹ the latest reviews of Australia, Italy, Japan, Korea and recent work on Mexico, and the reviews in three non-member countries: Russia, China and Brazil.

What are regulatory oversight bodies?

This report focuses on the institutional aspects of regulatory governance, through the analysis of the regulatory oversight bodies. This report focuses on the institutional aspects of regulatory governance. The generic term Regulatory Oversight Body (referred as oversight body in the text), represents a governmental “regulator of the regulators”, a sort of a watchdog responsible for overseeing regulatory quality. This function may often be shared across several institutions or ministries which share a number of prerogatives, powers and functions to achieve this task. The report focuses on the bodies located in the Executive Branch. Reference will be made to legislative and judiciary branches, emphasising in particular synergies and co-ordination aspects. (See table 1 below for an overview of regulatory oversight bodies across OECD countries).

The institutional dimension of regulatory policy is often key to the success of policy initiatives aimed at bringing real and visible change in a given country. The OECD possesses a unique comparative advantage through its network of policy contacts to consider the full policy implications of institutional aspects. Reform implementation requires institutional and executive interventions, but also relies on a number of policy instruments, including benchmarking, reporting, and peer pressure. OECD and other international institutions also play an important role in nurturing momentum for reform, helping reformers face resistance from specific interests.

Why focus on oversight bodies?

The key goal of the report is to examine how these oversight bodies help to improve the quality of existing and new regulations. This reflects the general trends towards regulatory governance across OECD countries. The analysis will define the core functions of these bodies and discuss how best they deliver their mandate. The goal is to understand their contribution to regulatory performance. Ultimately, these oversight bodies have to be accountable for the inputs, resources, political capital and institutional endowment that are invested in them. The report will discuss how institutional design options contribute to the achievement of policy goals. Finally, the report discusses factors contributing to the performance of the regulatory oversight bodies.

I. THE FUNCTIONS OF REGULATORY OVERSIGHT BODIES: AN ANALYTICAL FRAMEWORK

In the past 20 years, OECD members have built new types of institutions: regulatory oversight bodies whose function is to enforce a national regulatory policy or part of it. Building effective and efficient institutions require clear strategy and sound analytical framework. This section highlights and discusses key core functions that are to be performed in terms of oversight.

Four core functions

Two approaches are available to assess institutions. The first is purely institutional. It examines the main focus and location of oversight bodies, or a combination of both (Danish Commerce and Companies Agency, 2003; OECD, 2003). This type of exercise assists countries with country-experience comparison. However, it leads to great heterogeneity and is not necessarily suited for a broad comparative study. The second approach is functional and focuses on the goals assigned by governments to institutions. The report privileges the second approach though it also pays attention to the institutional dimension of the assessment. The report uses this approach to discuss how the overall institutional features and the organisation of the administration can help or hinder the performance of the institution in delivering the following core functions.

The four core functions that should be assigned to one or more institutions charged with improving regulatory quality are:²

- Co-ordination and supervision
- Challenge and scrutiny
- Training, advice and technical support
- Advocacy

These functions are also presented in Table 1 and discussed below.

Co-ordination and supervision

Governments set up an oversight body to implement and monitor a regulatory policy or initiative. That is, they endow a particular institution with the task of setting up the procedures and machinery to ensure the quality of new or existing regulations. In particular, they establish the principles as well as the standards, criteria and co-ordination mechanisms so that draft regulations are properly prepared, reflecting the need for policy coherence and the most efficient ways to achieve the intended goals of the regulation. For this purpose, governments assign inputs (political, budgetary and human capital) to these institutions. In turn, these institutions are made accountable and are expected to produce outcomes, reflected in “high-quality regulation.” In practical terms, they mandate the oversight body to set co-ordination and monitoring systems and administrative procedures to manage the undertaking in order to achieve certain goals. The type of outcomes can be a reduction of 25% of administrative burdens through a Standard Cost Model mechanism, or more generally, it can foster a broad regulatory improvement such as higher level of legality, efficiency or transparency of the regulatory environment. Often the oversight body is closely linked to the instrument selected, such as Regulatory Impact Analysis (RIA), administrative simplification, SCM, etc. In some countries, institutions are set up to implement a specific regulatory tool, such as the *Impact Assessment Unit* in the German Ministry of Interior.

Table 1. Core functions and typical tasks of oversight bodies

Typical Tasks	Examples
<i>Co-ordination and supervision</i>	
Strategic planning of future policies or regulation Verifying the quality and timing of submission forms. Managing a registry of enforceable regulation. Responsible updating of a registry of formalities (i.e., permits, licences and other information obligations)	Preparing and publishing the regulatory “forward plan” of the government Collecting draft measures proposed by ministries to elaborate yearly or periodically legislative or regulatory programmes
Evaluation for policy revision and validation of key quality standards	Assess RIA or regulatory consultation performance – internal and external consultation and communication Participate in international benchmarking exercises (e.g., OECD regulatory indicators, Doing Business Indicators)
Undertaking short-term initiatives by co-ordinating and supervising the government’s action	Prepare across-the-government response to an immediate crisis avoiding the creation of undue problems for the longer term
<i>Advice and technical support</i>	
Help regulators self-assess the quality of their regulation	Issuing guidelines on how to conduct RIA. Early collaboration with regulators to shape the rule toward increasing net benefits – not just waiting to receive the proposed rule. Efforts to reduce inconsistency across agencies
Promote evidence-based decision making – in medicine, engineering, regulation, and oversight – empiricism applied to the administrative state.	Promote alternatives to regulation
<i>Controls through the “challenge” function</i>	
Enforcing Regulatory Policy	Allow the policy to go forward until it is approved by the oversight body (e.g. approving RIA reports, SCM calculations, etc.)
Quality control of new regulations	Review the quality of impact assessments reports
	Review routinely all major or significant proposed new policies or regulations
Quality control of existing regulations requiring agency action	Launch deregulation and reregulation initiatives Assess of the administrative cost through instruments such as the Standard Cost Model or the Guillotine
Advocacy for reforms <i>Based on the initiative of oversight bodies or based on complaints or appeal from stakeholders or other public bodies at national and sub-national levels</i>	
Co-ordinating with other pro-reform bodies	Engage reviews with the competition authority
Promoting desirable policies	Prompt regulators to develop rules that have not yet been proposed.
Improving regulations at lower levels of government	Organise one-stop shops. Eliminate duplication, enhance co-ordination

Challenge and scrutiny

At the core of the oversight concept is the idea that self-assessment and self-improvement by regulators is required but not sufficient to prepare high-quality regulation. This, perhaps, is the central function of an oversight body. No doubt this is also the most resented and controversial core function. It is often assimilated to the scrutiny or “challenge” function, and consists in appraising, on technical grounds, the quality of regulators’ existing or new regulation and providing a veto or an opinion/comment on the draft prepare by the responsible regulator.

Usually two basic types of approaches exist to implement this function. First, and more common among OECD countries, the oversight body focuses on providing a regulator with an independent assessment on the quality of a regulation (*i.e.*, RIA, SCM calculations), pointing out flaws and shortcomings and proposing improvements. For this, the oversight body returns its appraisal to the regulator directly. In more extensive systems, the oversight body advises the government and seeks support from other ministries for its view about the quality of a draft with (but sometimes without) approval from the drafting regulator. In some cases, the oversight body may publish its comments and assessments, thus providing powerful pressure for improved performance under a “shame and blame” system.

A second and rarer implementation of the challenge function is to give special powers to the oversight body to enforce quality criteria or a specific programme. This, in effect, transforms the oversight body into a “gatekeeper” with a veto on the quality of the proposed regulation. In the real world, the difference often falls in the middle of the two approaches and is subject to the political forces in action. In some countries like Australia, approval of the adequacy of each RIA is required from the oversight body before the regulatory action proceeds. Depending on the power of the oversight body some opinions can in effect become nearly impossible to ignore. In the U.S., OIRA has the authority to return draft regulations to agencies for reconsideration.

The challenge function is exercised mostly on new regulation and, in particular, through the powers to scrutinise, comment or approve the RIAs and other submissions prepared by regulators. The emergence of systemic administrative reduction programmes where ministries and agencies also need to submit reform proposals often falls in the second approach of the challenge function. In this case, the oversight body needs to approve the proposals.

Nevertheless, a significant number of oversight bodies without the challenge function still exist (see Table 2 and Table A.1 on functions and responsibilities in the Annex). For example, in the Japanese Ministry of Internal Affairs and Communications (MIC) has recently received the responsibility to check the assessments prepared by the regulators and sectoral ministries, in order to ensure the quality of the RIA.

Training, advice and technical support

A third function of an oversight body is to assist regulators in improving the quality of their regulations. Key support tasks include the publication and dissemination of extensive written guidance and manuals. As well conducting training on regulatory quality issues has been an important way to support regulators in complying with new disciplines, and to raise awareness and promote a cultural change among regulators and regulatees. For example Australia’s OBPR has been providing for many years formal training to policy officers that are involved in preparing regulatory proposals for the federal Australian Government, the Council of Australian Governments (COAG), Ministerial Councils and national standard setting bodies. OBPR training programmes are organised into three types: high-level briefings on the framework for best practice regulation requirements; general training on RIA and use of the Business Cost Calculator (BCC), and a comprehensive seminar series on preparing RIAs, using the BCC and undertaking

cost-benefit analysis. In addition, oversight bodies have been engaged in delivering specific expertise to regulators in the context of their development of particular regulations through mechanisms such as a “help desk” such as the one implemented by *ACTAL* from the Netherlands, and which provides expert input directly, or through the ability to fund the employment of outside experts to complete specific tasks.

Advocacy

The fourth core function consists for the oversight body in unilaterally encouraging improvements of the regulatory framework. This advocacy function can be internal to the administration, as well as external. When processes are internal – often classified – oversight bodies have a mandate to recommend quality regulation through specific deregulation/reregulation initiatives to ministries, regulators or agencies. Advocating reform is important in helping to identify opportunities for reform and in supporting and arguing for the development and progress of reform initiatives. In other cases, oversight bodies have the opportunity to advocate publicly and engage in external communication, calling upon stakeholders and the policy debate to push through a programme for regulatory improvement. The situation of many oversight bodies – at the core of the regulatory decision-making process – provides a unique opportunity to “see the forest rather than the trees” and thus, compensates the typical “tunnel vision” of most regulatory agencies. Oversight bodies have a good knowledge of the situation and this privileged information should provide them insight to “ring the alarm bell.” For example *OIRA* has developed a practice of sending “prompt letters” to regulators and posting those on its website.³

Synergies and fragmentation in performing these functions

Accumulating expertise, information and institutional memory can provide an oversight body with economies of scale and scope when undertaking more than one function. Certainly it is easier to prepare a guideline, design and implement a training programme or challenge new regulations when equipped with insightful knowledge of the substance and standards accumulated through different aspects of a regulatory policy. Consequently many oversight bodies have integrated, through an explicit mandate or through practice, several functions, with perhaps the advocacy one as an exception.

On the other hand, it should also be acknowledged that the pure model of an extended oversight body performing all core functions to their full extent *may probably not exist*. In reality, the functions in totality or in part have been performed by more than one institution creating a sort of network of government bodies, each of which is charged with part of this agenda. For example, in many countries, the responsibility for RIA is separated from the responsibility for administrative simplification programmes. The responsibility of the advocacy function is also often delegated to *ad hoc* advocacy bodies (See OECD 2008a)

Resolving tensions among the core functions

Possible tensions can emerge when undertaking the functions by a single oversight body. For example, the endeavour to act effectively as an advocate and as a trainer may require significant resources that could deplete the resources and concentration on the day-to-day role co-ordination of the process and the assessment of draft regulations. In addition, supporting and training rule makers as early as possible in the process may raise conflict of interest when the oversight body needs to exert a challenge function on such work at the end. The technical credibility of the oversight body may also be affected by the degree of involvement in co-ordinating the process and training regulators and stakeholders on the different techniques as they may turn judge and jury. Some of these reasons probably explain why some governments have established “arms’ length” arrangements to organise the advocacy function, or are counting on other public entities, such as the competition authorities, to effectively engage in the “advocacy function”.

Constitutional and structural aspects

Over the past 20 years, oversight bodies have developed various institutional settings to perform their functions. There is evidently no “one size fits all” when building institutions, as these have to take account of the various institutional and constitutional settings in the countries. Oversight bodies differ in the scope and nature of their efforts in undertaking each core function even if they share common tools such as RIA and the SCM, and often have common approaches. Some oversight bodies engage in training and advice, simply publishing and communicating Official Guidelines, while others deploy multi-year training programmes involving hundreds of staff.

This reflects the variety of public governance across OECD countries. First and foremost, *constitutional arrangements*: organising regulatory powers across the Executive Branch and the other Branches of the State have set the general institutional framework in which oversight bodies operate. Presidential systems such as in the U.S., Mexico or Korea can more easily accept stronger “executive” oversight bodies accountable to a “strong” president. Highly decentralised governments, where ministries are endowed with comprehensive regulatory powers like Switzerland or Nordic countries, have on the other hand followed quite a different approach. They have, for example, tended to search for internal consensus and gradualism before embarking on permanent oversight bodies. Some federal governments like Mexico, Germany, Canada or Australia where the powers of the oversight body is restricted to national regulation, have built organisations with strong advocacy powers targeted to sub-national levels of government (OECD, 2009d).

Administrative and political traditions have further framed the relationship between the regulator and its oversight body. In many Nordic countries, the sizeable regulatory discretion allotted to many dispersed regulators, often at the level of agencies, reflects a situation referred to as “centrifugal regulatory situation”, with a subsidiary tradition rooted in strong, accountable but autonomous public management bodies.⁴ For example, Swedish oversight bodies operate in a well-established public governance framework characterised by a small policy-making centre and a very large network of implementing agencies. A highly autonomous municipal level of government adds complexity to the distribution of regulatory power across to the legal framework. This context explains the emphasis on co-ordination in such a decentralised context.

Another feature with important impact on the creation and growth of an oversight body is the political and *administrative customs* existing in a given country. The deployment of new co-ordination, monitoring and, in particular, “challenge” functions is necessarily resisted by the bureaucracy for a number of reasons related to the culture of the public sector. Many administrative and managerial cultures in northern Europe tend to avoid confrontational oversight and external control. For example, some have claimed that new techniques such as a RIA or a mandatory consultation overseen and enforced by a special oversight body tend to “break out of co-operative and consensual traditions.” In Germany, for example, co-operation and consensus building are key features of the way in which the federal executive works. The principle of ministerial autonomy means that the Chancellery acts more as a co-ordinator rather than as a driver of policy or law maker. Centrifugal forces need to be kept in check and the system raises a significant challenge in case more centralised processes are to be envisaged, with the development of a collective, whole-of-government approach to reform.

This situation is also reflected in the EC governance system. The EU machinery has been built on a strong tradition of collaborative harmony or collegiality rather than adversarial or hierarchical relations epitomised by the “College of Commissioners” (each from a different member State, and appointed together as a slate). A situation very different than the one existing in the U.S., where the policy-making traditions, by contrast, favours adversarial debate to test and shape decisions, not only in courts but also in the executive and legislative branches.⁵ However, policy analysts have also witnessed the establishment of

the IAB, as a way through which the General Secretariat could exert a function of policy coherence, similar to OIRA in the U.S., and obtaining a wider say on policy developments in specific directorates. In Brazil, the establishment of Quality Regulation requirements for RIAs co-ordinated at the level of the Presidency has also been perceived by some analysts, as a way to increase the accountability mechanisms on the existing sectoral regulatory agencies, which enjoy significant operational autonomy.

History, of course, has influenced the development of regulatory policy and the institutions that go with it. Institutions grow up in historical contexts, evolving through the day-to-day contact with political, economic and other influences. For example, analysts have made the case that the first oversight body set up – the US OIRA – was a reaction of the “Great Society” regulatory expansion during the 1960s and early 1970s (OECD, 2008b). Learning from past developments in other countries has also been a powerful way to create and shape this type of institution, in particular, in Europe. Recent oversight bodies, for example, have been set up using other countries’ experiences. The Dutch *ACTAL* has, for instance, been a source of inspiration for setting up Regulatory Councils in Germany and Sweden. International advice has also played an important role in framing the organisation. Certainly the advocacy of the OECD to institutionalise regulatory policies has influenced the creation and shape of new institutions such as in Mexico and Korea.

In some countries, oversight bodies have gradually evolved into new forms and are influenced by their own past. For example, in the United Kingdom the oversight body experienced five significant institutional changes of its Better Regulation apparatus over the recent period. History and experience also explain how some oversight bodies have grown gradually, gaining new powers, or even merging as they build a constituency and prove their usefulness. This has been the case for many countries initiating specific programmes such as undertaking of the Standard Cost Model and progressively upgrading the responsible unit into a full-fledged RIA unit. The *Regulatory Reform Group* in the Netherlands reflects this progressive broadening and integration of the regulatory reform agenda under a single oversight body. In Switzerland, the system of impact assessment started with an SME test, which was later expanded into a broader i process.

Features of a particular oversight body have also been influenced by the *circumstances of its creation*. In particular, the establishment of a new institution with enforcement powers—that is, the “challenge function” in a nutshell – has necessarily changed the status quo as it reduces the level of regulatory discretion exercised by ministries and agencies. This could be resented by regulators. For instance, in Nordic countries, the decentralised approach to governance, with significant autonomy for ministries,⁶ supported by government agencies, was reluctant over a long time to accept disciplines managed by the centre (OECD, 2010a). Regulatory agencies and ministries opposed the new controls based on sound arguments on the need to protect their independence of action anchored in the constitution where the government traditionally defines missions and sets the goals for agencies.⁷ Similar moves were observed in France and this can, in part, explain why a modification to the Constitution was required to establish and make acceptable the use of impact assessments.

Sometimes the lack of enthusiasm or even opposition to effective regulatory oversight has come from the regulatees themselves. Often powerful businesses feel that their relationship between their representatives and sectoral regulators is good, with cosy arrangements, and they might resent a reform that may reduce the perceived protection in their favour.

Size and geography also matter. Larger countries or geographic zones with hundreds of millions of inhabitants and regulatees, have found the need to establish larger and probably stronger oversight bodies than is possible in smaller jurisdictions and public services as is the case for *OIRA* in the U.S., as well as for the *IAB* in the European Union. The rules that are prepared for large jurisdictions also apply to very large economies, with a high potential for cost-benefit analysis to improve economic outcomes.

Box 1. The Nordic model and implementing regulatory policies

The Nordic model presents common characteristics. Most of these countries have a *strong state* and *large public administration*, which is highly *decentralised* through the territory (*i.e.*, municipalities) or across the government through ministries and agencies. This situation often reflects the *geography* of the country: Sweden, Norway and Finland are large countries, with a small population. In general, the governance system is based on ministers' constitutional responsibility in their respective areas, with relatively large ministries and a relatively small Prime Minister's Office. The **electoral system** also plays an important part. Public policy goals are broadly shared across the main political parties and society. But proportional electoral rules tend to make coalition governments (sometimes in minority), where parties share the different ministries. Ministries enjoy considerable autonomy in the regulatory process and are supported by agencies, in a decentralized setting (see Footnote 6).

Thus, Nordic countries have developed mechanisms to promote coherence and integrated regulatory policy making through mechanisms based on frequent and regular discussions and the take up of key decisions by the full Cabinet. Policy decisions are the collective responsibility of the Cabinet, and decisions must be unanimous. The role of inter-ministerial committees and working groups is thus vital to facilitate discussion between public service officials.

A political and societal culture characterised by *consensus building* ensures a smooth working of the machinery of the State. There is widespread participation in decision making, a search for consensus and institutionalised contact arrangements among government, employers and the unions. Consensus-building tends to promote gradual, rather than rapid change. It also helps in reducing potential conflict, as pragmatic solutions are favoured.

Wherever possible, the government encourages broad participation to build consensus and also favours the use of working groups and committees comprising social partners (government, business and the trade unions) and others (such as NGOs and experts), which are used to prepare reports on policy initiatives. In Sweden, Committees of Inquiry are an important feature of the institutional landscape and may provide important input to law- and decision making. Before the government draw up a legislative proposal, the issue is often analysed and evaluated by such Committee, independent of the government, and generally made up of experts, officials and politicians. The Committee makes recommendations as well as a consequences assessment, and its report is published.

Source: OECD (2009a), Reports on Better Regulation in Denmark and Sweden.

The trend towards setting up regulatory oversight bodies

Comparative OECD evidence shows that an increasing number of countries relies on regulatory oversight, implementing “check and balance” principles with, to some extent, the challenge function (Figure 3) The reforms may take time and discussion and may cause internal political strife stretching over a number of years, as tradition, constitutional precepts and opposition from the bureaucracy and regulators require adjustment. An oversight body with genuine enforcement powers will require the centralisation of regulatory processes, as was the case for other key functions of the State, such as budget management.⁸ Despite these forces, countries are increasingly using a higher degree of central oversight over regulatory quality, budget management and public service staff policies. This reflects a strengthening of regulatory governance approaches across OECD countries.

The effective deployment of a proper regulatory policy involves self-assessment by regulators associated with institutional enforcement and monitoring mechanisms. Even in strongly departmentalised governments a trend toward horizontal oversight functions at the centre of Government has been noted in recent years. For instance, in Germany the NRCC in charge of the SCM and RIA is a clear innovation compared with previous German traditions. In Sweden, the *Better Regulation Council* also represents a significant innovation, as it was established as an independent advisory body (“external watchdog”). Its core mission is to assist ‘rule makers’ (in ministries or government agencies) in their work to simplify regulations for enterprises. It assesses the general quality of impact assessments, tracks the overall Better Regulation agenda and provides advice and support for a cost conscious and effective regulatory

framework, and to the extent possible, assists committees of inquiry in their work. Specifically, the Council will scrutinise all proposals for new or amended regulations (laws, ordinances and other regulations) from both ministries and government agencies that could affect the working conditions, competitiveness or other issues relevant to businesses, with a view to speeding up culture change for more effective impact assessment. Draft legal/regulatory proposals/final reports from committees of inquiry and impact assessments must be submitted to the Better Regulation Council for an opinion by the Council.

Moreover, setting up of regulatory oversight based on a “check and balance” principle and challenge functions can also be built on historical precedents. France and many Civil law countries set up independent oversight bodies centuries ago such as the Council of State to “check” the preparation of new rules by administration. Even in decentralised countries, the law and regulation drafting in the Executive Branch of a government has been considered too important to be left to regulators only.⁹ In Sweden, the Council on Legislation (*Lagrådet*) is a special institution that ensures conformity with the legal system and compatibility of a statute with higher-level and constitutional laws. It is made up of judges (active or retired, drawn from the Supreme Court and the Supreme Administrative Court), and has an important *ex ante* legal scrutiny function regarding new regulations. Major regulatory proposals must be submitted to the *Lagrådet* by the government. It checks proposals against the provision of the Instrument of Government, which states that any statutes which contradict higher-level laws may be struck down if the error is “manifest.” The *Lagrådet* also bases its opinions on precedent, including its previous rulings. However, its opinions are in principle non binding.

As the regulatory state expands among OECD countries, the quality of regulation has been further understood and controlled beyond the Executive Branch itself. New and specific mechanisms are applied to other branches of the State. In the U.S., the General Accountability Office (GAO), attached to the Congress, issues occasional reports on regulatory matters. A situation also encountered in other OECD countries, where the parliamentary committee in either Houses of Parliament, have a remit to consider Better Regulation or simplification as an issue in its own right. Recently general audit offices have taken stake in the oversight functions. The very influential United Kingdom *Audit Office* has, since early 2000, set up a special unit and has been in charge of influential reports and reviews (OECD, 2009c). In Sweden, the *National Audit Office* has also been of importance in encouraging the government to set up a structured programme for regulatory reform aimed at improving the business environment (OECD, 2010a). In the European Union, the European Commission has also completed an external evaluation in 2004, and the EU Court of Auditors is to finalise an extensive audit in 2010.¹⁰

Ensuring the transition to proper regulatory oversight

The transition to effective regulatory oversight often represents a breakthrough in terms of constitutional, traditions and faces bureaucratic opposition. It may either be gradual, or happen during a crisis, which offers an opportunity for institutional change.

In many countries change has been incremental, with the emergence of new oversight bodies—even with limited “challenge functions” associated to the implementation of SCM. This reflects a process of adjustment to the constitution and local constraints. Even when reforms were supported by a forceful “champion,” with a strong political mandate, governments have needed some form of explicit or tacit support from regulators since regulatory decisions are made by them. This situation has been reflected in the development of robust co-ordination structures that gradually engage into a challenge function (see Section II). For example, in Denmark, while ministries have retained significant autonomy in the implementation of the policies, co-ordination has been strengthened through the government committee framework and through enhanced guidance to officials. In the case of the European Commission, the setting up of the *Impact Assessment Board (IAB)* in 2006 followed years of preparation and in-depth reports on the shortcoming of previous systems. The selection and composition of its members directly

reflect the three pillars of the impact assessment – economic, social and environmental impacts. Similarly, recent changes in France reflected a gradual increase in understanding the political relevance regulatory quality and the need to have it institutionalised in the state apparatus.

Other countries have taken advantage of a crisis, since they offer opportunities for significant reform. For example in Mexico, the 1994 financial crisis in large part explained the need for a systemic approach to regulatory quality. In the early 1990s, when the Mexican government, facing a major economic crisis, replaced its administrative simplification by a powerful and top down guillotine approach lead by a powerful new oversight body first the Deregulation Unit which was transformed in 2000 in the *Federal Commission for Regulatory Improvement (COFEMER)*, (OECD, 1999; World Bank/IFC, 2009). A similar situation occurred in Korea after the 1997 economic crisis (OECD, 1999; 2004).

The need to better communicate the goals and means of a regulatory policy is also an important factor. In the Netherlands, the *Regulatory Reform Group (RRG)* as well as *ACTAL* progressively became the main interlocutor for stakeholders. Today, these organisations act as a general focal point for informing business and civil sectors about progress on Better Regulation. In particular the RRG’s communication strategy is based on a broad public relations framework, as well as a business sector specific approach. Business “ambassadors” have been engaged to explain and discuss important developments, not only to the business community but also to other stakeholders and opinion leaders.

The importance of benchmarking and peer pressure between countries has also played a powerful role in the emergence of oversight bodies. The OECD and EU networks have promoted and assisted countries to set up regulatory quality policies implemented by effective institutions. Good practices such as the Dutch SCM system has played a very important role in setting up *ad hoc* structures and bodies which are later transformed into a standing and permanent oversight body.¹¹

The risk of over-institutionalisation

The current political demands for better regulations and better regulatory processes and the higher priority which governments have assigned to the regulatory agenda have nevertheless raised the possibility of over-institutionalisation. The development of new institutions working in parallel and sometimes competing on better regulatory governance can stimulate innovation as well as create synergies, but it can also foster duplicative and even contradictory initiatives and efforts. For example, a significant number of countries and jurisdictions like Turkey, Italy, Mexico and the European Commission have developed comparable and parallel institutions to improve the stock of regulation (*e.g.*, through SCM techniques) and separately to control the flow of regulation (*e.g.*, through RIA). In Portugal, the better regulation agenda currently lies with the Minister for the Presidency, with two Secretaries of State playing a “leading role”: the Secretary of State for Administrative Modernisation (SEMA) and the Secretary of State for the Presidency of the Council of Ministers (SEPCM). On the other hand, the legal centre of the Ministry for Presidency (CEJUR) has been assigned the responsibility to implement the *Legislar Melhor* Programme. In parallel, the Agency for Administrative Modernisation (AMA) support SEMA and develops and evaluates activities related to administrative simplification and e-government, which includes the implementation of the Simplex Programme. Italy until late 2009, counted at least four organisations dealing with different core functions all related to various parts of the Presidency of Council of Ministers: the *Unit for Simplification and Better Regulation (USQR)* and the *Structure for Normative Simplification in the Ministry for normative simplification, Legislative Office (DAGL) in the General Secretariat of the Presidency of the Council*, and the *Administrative Simplification Office (UANAS)* in the Ministry of Public Administration.

The deployment of a set of parallel institutions has benefits including competing different voices and approaches as well as the establishment of networks replacing static hierarchies. However, this also presents costs: budgetary and institutional costs, as various bodies have to compete for scarce talent among officials; administrative costs to co-ordinate these institutions; and most importantly the lack of a single more robust single voice advocating regulatory quality.

Towards a typology of regulatory oversight bodies

Five dimensions need to be taken into consideration to establish a typology for regulatory oversight:

- *With or without supporting secretariat in charge of substantive analysis.* Some oversight bodies have been set up as councils, committees, inter-ministerial groups and task forces with the purpose to carry through and co-ordinate, promote, propose or implement regulatory policy. Interestingly some countries have created a double structure: a political body at “arms’ length” to make decisions based on the opinion of a technical secretariat which is either part of the government or external to it.
- *Degree of autonomy inside the Executive Branch.* Oversight bodies, either with or without a standing supporting secretariat, unit or agency, have been endowed with more or less autonomy possessing *de facto* or *de jure* a degree of autonomy in terms of voice, membership, budget or a staffing policy. For committee-type oversight bodies this is reflected by a membership including or composed by non-governmental representatives such as academia and business organisation (sometimes representing a majority). For non-committee oversight bodies, an agency-type body will have substantially more autonomy than a unit-based one. However, when regulatory oversight bodies receive a say on major regulatory instruments, which represent the core of the executive’s existence, they are necessarily close to the centre of the political process, and subject to it. To be effective, they also need to be close to a political champion, which will ensure the quality of oversight within the executive branch.
- *Reporting and access* also differentiate oversight bodies. Access to the highest level of government defines the type and power of a regulatory oversight body. An important criterion for this dimension is the location of the oversight body and its hierarchical relationship with regulators. This dimension also reflects the accountability mechanisms in place to control the oversight body. Some report to horizontal ministers (*e.g.* Finance and Justice Ministries) others to more sectoral ministries (*e.g.* Economy, Interior or justice). Other oversight bodies have been located in or report directly to the centre of government (see Section on location of the oversight body, Part II.)
- *Regulatory areas and tools.* Another important difference is the focus of the mandate. Some countries have set up “single purpose oversight bodies” dealing with specific sub-elements of a regulatory policy, *i.e.*, plain language or burden reduction for special groups, administrative simplification. The latter narrowly defined “Administrative Simplification Agencies” refers to organisational approaches where a special government agency has the promotion of administrative simplification policies as its sole or primary objective.
- *Sustainability over time.* An important distinction between oversight bodies is between those that are permanent, and which in particular will survive specific policy or electoral cycles, and those that are *ad hoc* reflecting a short-term agenda. The latter refers to situations where bodies or committees are established to work only for a certain amount of time or until the production of certain outputs or outcomes, *i.e.*, a report giving recommendations to the government on how to improve the quality of regulation. It offers a more flexible approach, but also risks lacking consistency and effectiveness over time. However, many of the non-permanent oversight bodies have seen their remit be renewed through time.

Table 2 shows a comparison of organisational approaches using previous categories. It is based on available OECD resources.¹² The table provides a general overview of the oversight bodies across OECD countries. They present a mix of institutional settings, with a few common points. The majority of the authorities with a full oversight role are “units”, attached to a powerful anchor within the executive, either the Centre of Government (Prime minister, President). In many cases, they have been set up, reshuffled or reformed significantly over the past 10 years. In a number of cases, agencies and council have also been set up. More detailed analysis on the role and functions of these bodies will help to better understand the rationale between the administrative form and the functions and duties that are assigned to them.

Table 2. Overview of regulatory oversight bodies in selected OECD countries

	Name	Date of Creation	Type:	Reporting	Time bound (expiration)
Australia	Deregulation Group (comprising the Deregulation Policy Division and the Office of Best Practice Regulation) in the Department of Finance and Deregulation	Function shift in Dec 2007 ⁽¹⁾	Unit	Finance	Standing
Canada	Regulatory Affairs Sector in Treasury Board (TBC-RAS)	2006	Unit	COG	Standing
Denmark	Simplification & Better Regulation Unit		Unit	Finance	Standing
Denmark	Better Business Reg. Div. of Comm. and Companies Agency		Agency	Economy	Standing
European Commission	General Secretariat/Impact Assessment Board (IAB)	2006	Unit	COG	Standing
Germany	National Regulatory Control Council	2006	Council	COG	Renewable (2011)
Germany	Better Regulation Unit	2006	Unit	Parliament, COG	Standing
Germany	Impact Assessment Unit		Unit	Interior	
Italy	RIA Unit at the Legislative Office, DAGL	2000	Unit	COG	
Italy	Unit for Simplification and Better Regulation (USQR)	2008	Unit	COG	
Italy	Administrative Simplification Office (UANAS)	2008	Unit	COG	
Japan	Subcommittee for Regulation and System Reform	2010	Council	COG	
Japan	Administrative Evaluation Bureau	2001	Unit	Interior	Permanent
Korea	Regulatory Reform Committee (RRC)	1998	Council	COG	Renewable
Korea	Regulatory Reform Bureau	1998	Unit	COG	
Mexico	Regulatory Improvement Commission (COFEMER)	2000	Agency	Economy	
Netherlands	Administrative Board for Administrative Burdens (ACTAL)	2000	Agency	COG	Renewable (2011)

	Name	Date of Creation	Type:	Reporting	Time bound (expiration)
Netherlands	Regulatory Reform Group	2007	Unit	Finance & Economy	
Netherlands	Steering Group for Better Regulation		Council	COG	
Portugal	Secretary of State for Administrative Modernisation (SEMA)		Unit	COG	Permanent
Portugal	Secretary of State for the Presidency of the Council of Ministers/ Centro Juridico (CEJUR)	1993	Unit/Agency	COG	Permanent
Portugal	Regulatory Reform Unit		Unit	Economy	Permanent
Sweden	Better Regulation Council	2008	Council	Government as a whole	Time limited mandate
Sweden	The Swedish Agency for Economic and Regional Growth (Tillväxtverket)	2009	Agency	Government /Ministry of Enterprise	Permanent
Sweden	Better regulation team, Division for Entrepreneurship,, Ministry of Enterprise, Energy and communications	2006	Unit	Enterprise	Permanent
UK.	Better Regulation Executive	2006	Unit	Economy	Permanent
UK.	Reducing Regulation Committee	2010	Council of Members of Cabinet	Parliament	Permanent
UK.	Regulatory Policy Committee	2009	Council	Independent /Parliament	Permanent
USA	Office of Information and Regulatory Affairs (OIRA)	1980	Unit	COG	Permanent

1. The function was shifted from the Treasury Portfolio to the Finance and Deregulation portfolio.

II. KEY FACTORS CONTRIBUTING TO THE SUCCESS OF REGULATORY QUALITY OVERSIGHT

There are many different factors which can contribute to the success of an oversight body implementing the regulatory policy agenda at either the national or sub-national level. Certainly, political will and support are of great importance.¹³ A variety of other aspects, which play a role, can be “external” to the design and operation of the institution. For example, the timing of when the body was set up may have reflected political circumstances and a window of opportunity. Luck and unpredictable events have also influenced the performance of any initiative, policy or institution. As the Chair of the influential Task Force on Reducing Regulatory Burdens on Business (“the Banks Task Force”) put it “even the best reports can get overtaken by events” (Banks, 2007). An oversight body can be established at the beginning of a term of office of a new government in countries with “strong” governments, (*i.e.*, presidential systems and unified governments with a large majority of the party in office); such entities have often enjoyed a more favourable environment which has been more conducive to positive action at least in the first few years of existence.

Aside from political aspects and unpredictable timing issues, a number of institutional design issues need to be systematically considered as they will play a major role and determine how oversight bodies will be able to intervene and perform their functions. These institutional design issues will have to be considered by any government wishing to establish or strengthen an oversight body with key inputs. They include: a clear mandate with associated powers; the administrative machinery to relate with the regulatees; the public and other national and international stakeholders; an adequate organisational design and proper location among other public authorities; and sufficient human and financial resources. These will be discussed in the following sections.

Mandate and powers

The most important step when creating an oversight body is establishing the mandate. Though some countries have considered that clear regulatory objectives can be self achieved by regulators, a growing majority of countries have come to the conclusion that enforcing the requirements for regulatory quality requires a specific institutional set up to assist, monitor and enforce the policy.

Through an act of State, a government can entrust a body with the power to overview regulators’ work or actions. Since issuing regulations and establishing rules is an essential component of the State, involving the Executive authority and requiring approval from Parliament for laws, such an authority will often be located in a core entity within the government apparatus. This is why in so many cases the oversight bodies are “units”, and why their powers and rules are derived from Cabinet or Executive decisions.

However, in a number of cases, the powers and rules of the game are determined in an act of state, either a financial management act, a sort of administrative procedure act or a regulatory policy act. This act may define the role and the functions of the oversight body and in some cases will create a specific executive body, such as in Mexico or Korea. When these acts of states are set up, governments have faced key questions concerning the type of authority created and the extent and limits to the powers to enforce the regulatory policy.

Usually the creation of the oversight body has followed or is concomitant with the establishment of the regulatory policy which specifies the aims the government wishes to achieve. Following the official statement of a new policy, the government entrusts the monitoring or enforcement of the policy to an oversight body.

The nature of mandate

Mandates vary significantly across the oversight bodies included in this study. The typical mandate of an oversight body includes one or more of the core functions analysed in Part I, from challenging and even vetoing regulations to simply applying a project like the SCM. Table A.1 in the Annex provides an overview of the key functions and powers of oversight bodies in selected OECD countries. Specific and concrete examples are provided in this table.

See Annex Table A.1: Regulatory oversight bodies in selected OECD member countries, functions and responsibilities.

Often, in the mandate, a government gives an oversight body the authority to:

- issue guidelines for the conduct and quality of impact assessments and other evaluative tools;
- review such impact assessments and recommend or require changes to reviewing proposed new regulatory actions and recommending or requiring changes;
- reject proposed regulations (when they fail a social welfare test or when they are not supported by adequate analysis);
- prompt the development of new regulations that would improve social welfare;
- review existing regulations;
- measure the costs and benefits of proposed and existing regulations;
- achieve a 25% reduction of administrative burdens;
- set or enforce a regulatory budget;
- improve the quality of inspections and enforcements, and
- prompt the conduct of impact assessment.

The legal form of the mandate

To have legal and practical power, governments have often given the oversight body their authority through some form of legal and administrative act. Table A.2 in the Annex provides an overview of the type of legal and administrative bases that serve as a basis for oversight bodies:

See Annex Table A2: Regulatory oversight bodies in selected OECD member countries, governance and statutes

Governments decide the type and *level of the legal source*: either through statute (legislation) or subordinate legislation or executive order. In some cases, the oversight body has received legal backing through a special law or the amendment of an existing law. When a law exists, the parliament establishes the institution. For example, in the U.S., the *Office of Information and Regulatory Affairs (OIRA)* within the Office of Management and Budget (OMB) was established by the Paperwork Reduction Act of 1980, although OIRA's regulatory oversight role is governed by an executive order. (Executive orders apply only within the Executive Branch and do not have the authority of a law). In 2000, the Mexican Congress

amended the Federal Law on Administrative Procedure in order to create *COFEMER* (the Federal Commission for Regulatory Improvement). Launching *ad hoc* policies such as a reduction of 25% of administrative compliance through a SCM might require a legal “genesis”, as was the case of the German *National Regulatory Control Council (NRCC)*.¹⁴ In Canada, the *Statutory Instruments Act (SIA)* provides the legal framework for regulation-making in Canada.¹⁵ All regulations delegated under legislation to the Governor in Council (GIC), a Minister or an administrative agency must also meet the requirements of the *Cabinet Directive on Streamlining Regulation (CDSR)* and follow the federal regulatory process. The Regulatory Affairs Sector in the Treasury Board of Canada Secretariat (TBC-RAS) provides support and advice to Cabinet and its committees, the Prime Minister and other Ministers on all regulatory submissions that require Governor in Council approval to ensure they meet CDSR requirements.

Setting the mandate of an oversight body in a law has significant benefits. First, the power conferred by parliament (or congress) is often considered more robust and resilient to administrative and electoral changes than a single order from the Executive. It is likely that the mandate and the oversight body will be able to weather resistance in the future as well as preserve the policy and its institution against backtracking through electoral cycles. For example, in Germany the designers of the *NRCC* provided it with an institutional construct which gave it a term that is legally set beyond the legislative term. The fact that a law reflects a consolidated political Act in a fractured parliament gives further strength to the policy and its enforcer. This was the case of Mexico, where the launching of the policy and the creation of the policy’s enforcer (*i.e. COFEMER*) was approved unanimously despite a polarised Congress. Furthermore, it can be considered that a law raises the level of visibility and degree of commitment to the policy and reinforces the authority of its enforcer. This was important in the case of Greece. In July 2006, the government was able to establish the regulatory policy through a law after previous attempts in 2004 and 2005. This law replaced the existing regulatory policy which was a Circular from the Prime Minister’s Office.¹⁶ Similarly in France, while in the initial stages regulatory policy was established in Circulars from the Prime Minister. Following a constitutional reform, parliament passed an Organic Law adopted in April 2009 which defines new legislative processes, including the requirement for impact assessment.

Nonetheless, a large majority of oversight bodies have been created by subordinated regulations. This is not only due to the impossibility of establishing them through laws. Administrative as well as legal culture and traditions also play a role. Some OECD countries can count on a long tradition of compliance with directives and executive orders with significant and credible enforcement or oversight powers. These are important assets of rule-based public authorities which have successfully secured stability and a deeply rooted respect for the law. What Germans called “the legal state” (*Rechtsstaat*) “and corresponds to a tradition confers high respect for the law.”

Often the legal tradition of a country concerning the organisation of the Executive Branch has conferred to the Prime Minister all discretion to create supporting bodies. In the United Kingdom, the oversight body, under its various modalities, has mostly operated with an informal mandate conferred directly by the Prime Minister.¹⁷

Some countries have also considered that a legal requirement may not be seen as a necessary or appropriate way to apply a governmental policy given the well established collegiate working arrangements, the fair compliance with executive orders or the need to have smaller and flexible administrations. Such is the case of Canada where the President of the Treasury Board has a mandate to promote the implementation of Smart Regulation in Canada and has established a specialised unit for that purpose: the *TBC-RAS*.¹⁸

This approach is shared by many countries with Westminster style traditions. In Australia, for example, the Cabinet process is the product of convention and practice, its principles and procedures are formalised in the Cabinet Handbook, not in legislation.¹⁹ However, given the Westminster tradition, the procedures have a binding effect. Conventions play a powerful role in ensuring that due process is respected. As a result, the arrangements in place are often stricter than in other countries, even if they are not supported by legislation.

This is also true for most oversight bodies which are organised as units from specific ministries rather than ministerial committees or arms' length agencies from the Executive. Often, these bodies have been created by cabinet rules and procedures which often provide a broad imprecise mandate to an administrative entity to monitor and enforce a procedure or mechanism. For example, in Turkey, RIA is enforced through a small unit of the *General Directorate of Laws and Decree* which itself is mandated through the Prime Minister by law with the role of managing the legal process for bills and bylaws before their approval by the cabinet.²⁰

Government generally tends to establish mandates with mixed instruments: some direct powers are derived from legal instruments, but in practice an internal regulation specifies the oversight body's powers. Such is the case of the U.S. where President Reagan's Executive Order 12291 in 1981 formally established OIRA as an oversight body. This order required agencies' to conduct regulatory impact assessments using benefit-cost analysis and to submit the intended rules accompanied with the corresponding RIAs to OIRA for review, while giving OIRA the power to return an unsatisfactory regulation to the agency.²¹ As a result, this order only applies to acts of the Executive, including regulations, while law proposals and measures prepared by independent regulators are not subject to this process. In Germany, the law established the *National Regulatory Control Council (NRCC)* but its mandate has been fleshed out by the *Joint Rules of Procedure* of the Federal Ministries.²² These rules do not have formal legal status but are binding on all federal ministries. Further administrative procedure requirements and guidelines are included in guidance materials on RIA. They are also reflected in the legislative technical requirements prepared by the Ministry of the Interior and the Ministry of Justice, as well as other line ministries in their respective policy areas.

The mandate matters in terms of the level of the statutory legislation conferring authority to the oversight body, as well as in terms of incentives and processes. In Australia, the Cabinet Handbook is an expression of administrative convention, rather than a set of binding legal practices. However, the rule-makers conform closely to this convention. It is also supported by robust administrative processes and a history of practice that makes it practically binding for the administrative behaviour of departments and officials. While incorporating RIA requirements in administrative law would ensure, in theory, a more binding obligation and could also be interpreted as a more robust expression of political commitment to the process, it would also have the drawback of limiting the flexibility in enforcing the policy (OECD, 2010a). In France, on the other hand, it was important that a high level statutory instrument establish the responsibility for RIA policy with clear responsibility delegated to the Prime Minister in terms of implementation of the new regulatory quality discipline (Goasguen, 2009).

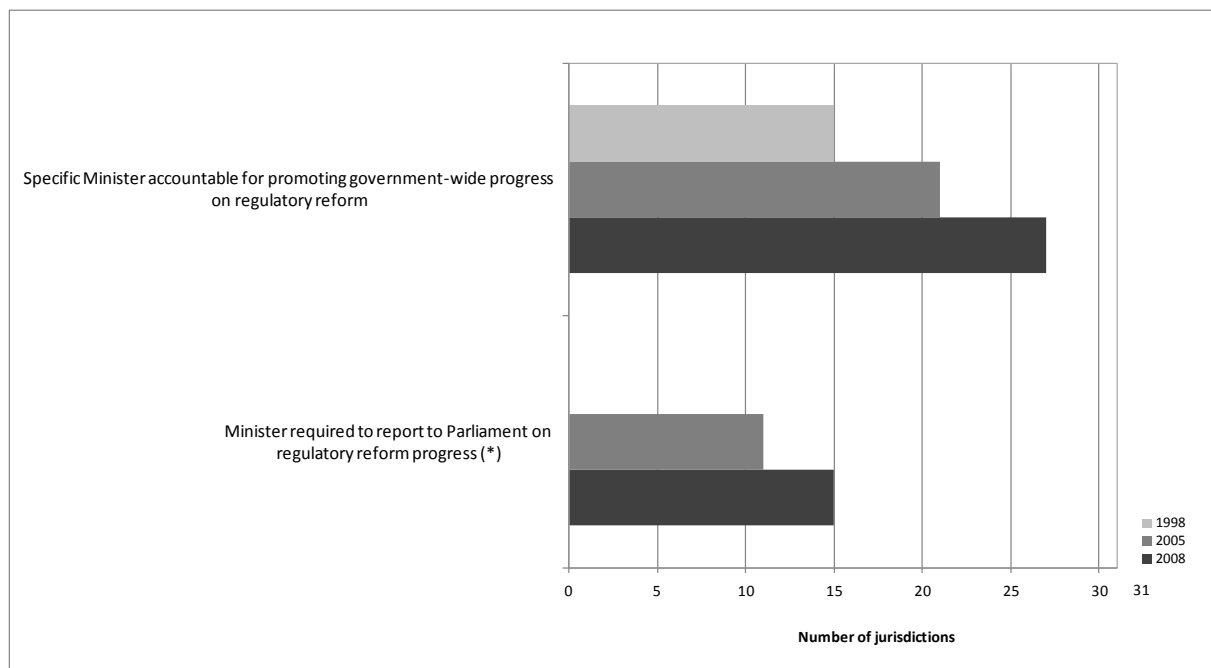
The need for clarity and credibility

Independently of the source of the mandate given to an oversight body, the political mandate requires visibility, clarity and credibility. In many ways the mandate helps identify the reform or policy "champion". Successful regulatory policy, with proper institutional backup, requires more than a legal text whatever its authority may be. Besides the legal aspects related to setting up an oversight body, political support is required to back the institution and give effective life to the newly established body. For instance, oversight and control functions are more effective when either a political officer, sometimes considered as a "regulatory tsar", or a dedicated Minister with responsibility for regulation reform becomes a champion inside the Cabinet and helps to ensure that ministerial colleagues comply with the regulatory

quality processes in preparation for and during the Cabinet process. This was the case of Australia where in 2007, the new Prime Minister created a new Cabinet portfolio position of Minister for Finance and Deregulation. The Prime Minister also created a supporting ministerial function in the Minister Assisting the Finance Minister on Deregulation.

An increasing number of OECD countries have strengthened Ministerial accountability between 1998 and 2008, with now over 26 jurisdictions having a Minister accountable for promoting government-wide progress on regulatory reform, and with half of the countries requiring the Minister to report to Parliament on regulatory reform progress.

Figure 1. Ministerial responsibilities for regulatory policy



Note: Data for 1998 are not available for the European Union, Luxembourg, Poland and the Slovak Republic. This means that this figure is based on data for 27 countries in 1998 and for 30 countries and the EU in 2005/2008. (*) No data are available prior to 2005.

Source: OECD Regulatory Management Systems' Indicators Survey 1998, 2005 and 2008. www.oecd.org/regreform/indicators

In Italy, as well, recent reforms have resulted in a minister being responsible for the policy and its institution. The 2008 appointment of a Minister for Normative Simplification supported regulatory reform at the highest political level and provided impetus for implementation. This was further strengthened by the strong support from the Ministry of Public Administration, which has made a commitment to advance the administrative simplification agenda, strengthen evidence-based decision-making, and increase quality and efficiency of the performance of public administration officials, for example through reducing the absenteeism of civil servants.

Accountability principles need to apply

Given the political and policy sensitivity of regulatory quality oversight, no country has provided uncontrolled powers over regulators to an oversight body. When governments delegate authority to an oversight body, they also establish constraints and limits. One of the ways for governments to address this issue has been to include strict political accountability mechanisms in the mandate of the oversight body. Without clear limits and accountability rules, an oversight body may be subject to the same criticism that justified its establishment: “who will watch the watchers, who will guard the guardians?”²³ That is, who will oversee the regulator of regulators?

Table A.3 also presents accountability mechanisms for regulatory oversight bodies, with their relations to the political level. In most countries, clear accountability mechanisms do apply. Some governments have also wished to send a broad non-partisan message about the enforcement of the regulatory policy through a public mandate. The public nature of the mandate has also made the oversight body undertaking subject to scrutiny, in order to avoid the appearance of bias, favouritism or subjectivity against one regulator or another (see Annex, Table A.3. Regulatory oversight bodies in selected OECD member countries, co-ordination mechanisms).

Governments have also improved the effectiveness of the oversight process through collective accountability mechanisms. A device that some countries have developed involves “sharing” accountability for the regulatory policy through the requirements for regulators to sign their draft regulations or RIAs. For instance, United Kingdom Ministers are required to “certify” the adequacy of the analysis in the RIA when submitting it to the *BRE*. An approach which is also used in some Australian States requires the Minister, as the proponent of the regulation, to sign off the RIA to certify that it adequately meets the RIA requirements and that it assesses the likely impacts of the proposed rule.

Oversight bodies have also been made accountable through reporting back to the “political sphere”. In Germany both the federal government and the *NRCC* are legally required to report on the programme annually (the burdens and the reductions achieved). These reports are an important tool for encouraging results. The first Cabinet report was presented to the parliament and the public in October 2007. All reports are available online on the central federal government’s homepage related to the reduction of bureaucracy. The *NRCC* also publishes an annual activity report, available online in German and English.

Establishing the right balance between enforcement powers and accountability presents significant challenges. One risk is the possibility of mixing and truncating responsibilities. Setting the mandate and delegated powers for an oversight body requires careful calibration to avoid shifting the responsibility for quality of the final regulations to the oversight body and exonerating the regulators at the same time. An oversight body entrusted with excessive power could be seen as a “super regulator”, creating the risk of shadowing ministerial responsibilities and power.

A too diffuse delegation also has implications for effectiveness. In some countries like Greece, clarity is needed on who has oversight or functional responsibility for ensuring the quality of both the stock and flow of regulation (OECD, 2010d). The Greek General Secretariat to Government, for example has responsibility for ensuring that RIAs are submitted with regulatory proposals, but it has no power to refuse to accept a regulatory proposal where there is no RIA, and limited powers to return RIA to ministries when it is believed to be incomplete. Individual ministries seem to be responsible for ensuring the quality and effectiveness of the stock of regulation under their remit.

Establishing an organisation and distributing powers

Separating political responsibility from technical assessment

Besides mechanisms which ensure direct accountability, governments have provided that oversight power is shared and/or filtered by political representatives. To do this, a number of countries have split the core functions – and in particular the challenge function – between a "committee-type" oversight body (*i.e.*, the political decision-maker) which carries the political responsibility and a ministerial service operating like a "unit-type" or an agency operating at arms' length in charge of the technical and more independent conformity assessment process against objective criteria. For example, in Sweden, an *inter-ministerial State Secretaries Group on Better Regulation* is chaired by the State Secretary at the Ministry of Enterprise at political level and assesses progress reports prepared by technicians and, in particular, by the *Better Regulation Council* or the *Impact Assessment Unit*.²⁴ The Netherlands is also a good example of such "vertical separation". *ACTAL*, a technical oversight body, "makes the case" and establishes the facts but leaves it up to a political body, the *Better Regulation Council*, operating as an inter-ministerial body, or even the cabinet to make the decision to accept or reject the technical assessment. In the United Kingdom, this was made very clear with the setting introduced in 2010, with the independent external *Regulatory Policy Committee* providing external scrutiny of the impact assessments of all new regulatory proposals, and the associated proposed "outs", under the One-in, One-out rule. The role of the *Reducing Regulation Committee*, a Cabinet Sub-committee is to provide the "clearance to regulate", in terms of challenging or approving the new regulatory proposals.

Splitting powers horizontally among different oversight bodies

Governments have also split powers between same level bodies. The goal for this division of responsibilities and power is to limit any excessive concentration of power and to reduce the danger of abuse of power. One approach is for the government to separate the undertaking of the four core functions between different bodies in order to dilute the centralisation of power. In Greece, the responsibility for the different elements of regulatory policy is divided between the Ministry of the Interior, the Ministry for Economy and Finance and the Office of the General Secretary to the Government. The idea is to avoid giving a single ministry an overarching responsibility for monitoring general regulatory policy, or on reporting to the Cabinet on progress in advancing the policy. Similarly, in Germany, the distribution of competencies, and therefore of the mandate at the federal level, is made according to the tool being enforced. The monitoring of the SCM programme is co-ordinated by the *Better Regulation Unit* in the Federal Chancellery responsible for piloting the Federal burden reduction programme and supporting the work of the *NRCC*. However, the *Impact Assessment Unit* of the Federal Ministry of the Interior gives general advice on RIA.

Another approach is to divide the regulatory policy into different sub-policies and entrust distinct entities, units or bodies with their undertaking and supervision. Denmark presents an interesting example where the regulatory policy has been distributed in a networked approach among key ministerial players and some technical bodies (see Box 2).

This type of functional division is even more apparent in the case of implementation of the advocacy function, which is given in many cases to a separate specific institution. For example, in the United Kingdom in the past, bodies such as the Better Regulation Task Force, and the Better Regulation Commission have acted as core drivers for advocating general and particular reforms. The more recently instituted Better Regulation Strategy Group appears to continue to play a similar role. The advocacy function differs in significant respect from the functions entrusted in the units charged with legal drafting. It can also exist in some diffuse form in a wider set of other key economic bodies, entrusted with different mandates. A typical case is the role played in some countries such as Italy and Mexico by the competition

authorities. For instance, the *Italian Antitrust Authority* has the authority to act as a watchdog within the government, using its advocacy powers to counter regulatory practices that undermine free markets (OECD, 2008a). In the case of Mexico, the *Federal Competition Commission* has been engaged in in-depth studies of regulated sectors with the assistance of OECD.

About one third of OECD countries have set up distinct advisory bodies (Figure 2), with some degree of independence from government. In the table in the ANNEX showing statute and functions, these bodies often appear as councils, and are charged with advisory and advocacy functions.

Box 2. Denmark Network of regulatory oversight bodies

In Denmark a number of bodies have the direct or indirect responsibility of ensuring the quality of regulations. The highest level, the standing inter-ministerial committee has responsibility for monitoring and developing Better Regulation policies and is involved in vetting draft regulations.

However, due to the difficulties in managing the flow of information, the government decided to establish a ***Simplification and Better Regulation Unit*** (Administrative policy centre) in 2002 in the Ministry of Finance, combined with the establishment of a ***Unit for Better Business Regulation*** in the Danish Commerce and Companies Agency (DCCA).

- The unit of the Ministry of Finance has specific responsibilities for co-ordinating the government's Better Regulation programmes and for promoting regulatory quality. Its work on Better Regulation is carried out by the Administration Policy Centre (ACP), which was set up in 2002 and was reorganised into two offices in September 2008: KAL and CED.
- The first office is the Centre for Quality, De-bureaucratisation and Leadership (Centre for kvalitet, afbureaukratisering og ledelse, KAL) responsible for developing the Better Regulation agenda. It plays a leading role in co-ordination across ministries (preparation of the Law programme, implementation of Better Regulation initiatives, in particular the De-bureaucratisation programme).
- The second office is the Centre for Administrative Efficiency and E-government (Centre for Effektivisering og Digitalisering – CED), which is charged with developing projects, in particular digitalisation projects, that can free up resources in the public administration.
- In addition the Ministry of Finance plays a leading role in the development of the Law Programme and in the preparation of specific draft laws and executive orders.¹ It screens the proposals of ministries, including the impact assessments, for inclusion in the Law Programme. It plays a leading role, either as the secretariat and/or the chair, in key government policy co-ordination bodies, including the Co-ordination Committee, the Regulation Committee, and the Economic Committee.

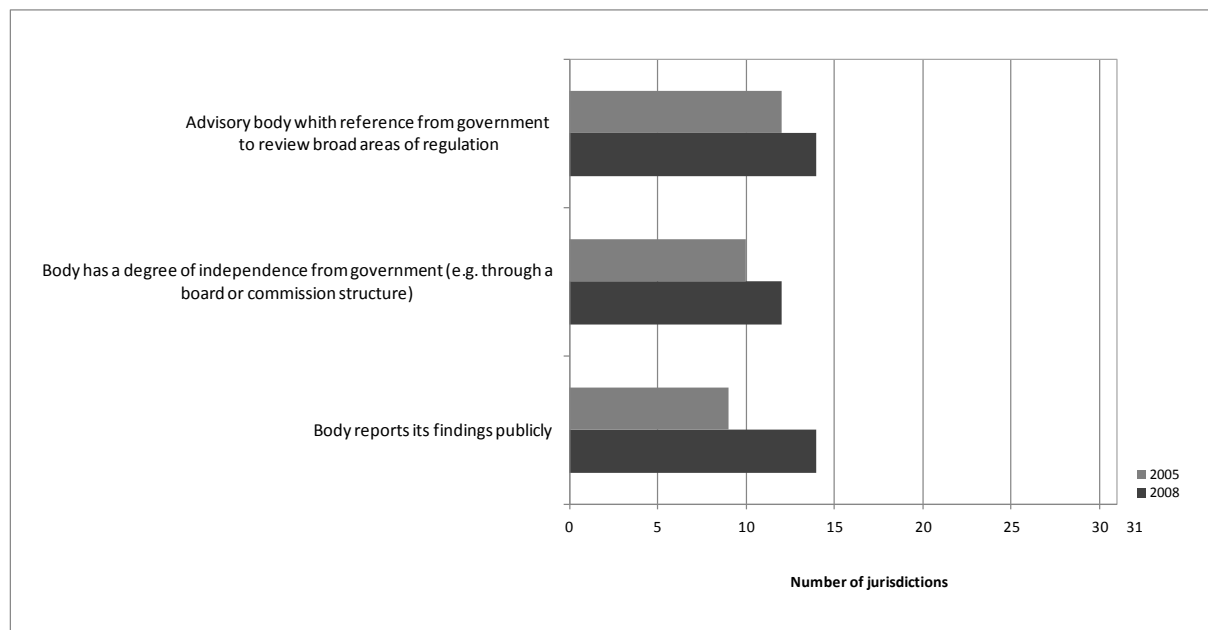
The ***Ministry of Economic and Business Affairs***, together with the ***Business Better Regulation Unit*** of the Danish Commerce and Companies Agency (DCCA), plays a crucial role in the development of Better Regulation in relation to businesses.

1. Executive orders are included in the process if they follow from new laws and are “caught” under the preparation of the Law Programme, or if they have budgetary consequences leading to an obligation for ministries to achieve the consent of the Ministry of Finance and perhaps the Folketing's Budgetary Committee.

Source: OECD (2009a), *Better Regulation in Europe: Denmark*.

Figure 2. Bodies charged with advisory and advocacy functions across OECD member countries

(2005-08)



Source: OECD Regulatory Management Systems' Indicators Survey 2005 and 2008, www.oecd.org/regreform/indicators.

Grouping or separating functions while ensuring policy coherence

Given the key role of regulatory policy as a tool for policy making, grouping of oversight functions may occur, while the advisory/advocacy function is kept apart. In other cases, fragmentation can result in dispersion of the oversight power, with risks in terms of implementation. This risk was highlighted in the Italian reforms which created a set of various bodies with different powers. The networked approach championed in countries such as Denmark may also be a way to overcome the challenges of fragmentation.

Co-ordination is required to ensure policy coherence. In the Netherlands, for example, the RIA and consultation processes are tightly co-ordinated between the Ministry of Justice' legislative quality assurance work, including the Directives on Legislation and the scrutiny of Bills process, and the RIA and SCM programmes run by *ACTAL* and the *Regulatory Reform Group*. Nordic countries, as well as highly decentralised countries like Switzerland, have also emphasised the co-ordination function to ensure policy coherence and consensus within the Executive Branch. In the United States, OIRA performs a key role in strengthening policy coherence within the Executive.

Establishing limits to the oversight

Another way of limiting a mandate is to establish exemptions and exceptions to the oversight functions. One typical exemption in place in most countries deals with **urgent regulatory proposals**. For example, in the case of RIAs in Australia, a proposal can go to the cabinet for specific reasons with Prime Minister's exemption. However, if it does proceed without an adequate RIA, it must be subject to a post implementation review within one to two years of the resulting regulation's introduction. In the case of Mexico, a regulator may request a special "waiver" from *COFEMER*, which gives them six months to prepare a RIA in the case of an urgent measure.

Another way to reduce the scope of the mandate is to designate exceptional or special areas to be exempted from oversight. In Sweden, for example, the RIA Ordinance specifies a few circumstances where an agency may refrain from making an impact assessment and the Ordinance on the obtaining of opinions from the *Better Regulation Council* also specifies a few circumstances where an agency may refrain from providing a draft measure to the *Better Regulation Council*. In the case of Mexico, the exemptions to the review process are specified by broad areas established in the Federal Administrative Procedure Law which created *COFEMER* and included sensitive areas such as defence, taxation and fiscal policy. In the case of the *OIRA* from the U.S, the overview remit only applies to federal departments and has excluded draft laws and most independent federal regulatory agencies (*e.g.* FERC, SEC, etc.).

Establishing time limits to the mandate

Setting up time limits for the exercise of the oversight power has also been used to avoid establishing a specific “veto power” entrusted to a technical body without political representation. This involves setting the requirement to renew the mandate after a few years based on performance – a practice which is actually rather normal for an oversight body in charge of a specific programme or the implementation of a major one-off regulatory reform effort like the SCM. However, as the regulatory mandate becomes broader, a solution that has been used is providing the oversight body with a renewable mandate. For example, the Dutch *ACTAL* was established for a period of three years in 2000 as the independent review body for the programme on administrative simplification, to work on the basis of the recommendations of the *Slechte* Report. It has been renewed twice, and was recently given a further existence until 2011. This scheme was also used for the German *NRCC* or the Swedish *Better Regulation Council* which have their mandate expiring on a specific date. These oversight bodies require explicit governmental decisions to continue to operate.

Permanent committees are more prevalent, which indicates, perhaps, a growing understanding of the regulatory quality agenda as an on-going responsibility of government, rather than as an episodic “regulatory reform” effort.

Analytical methods influence the mandate

The mandate a government uses to delegate the authority to oversee regulators’ actions is often linked to the analytical methods and other review criteria which it specifies. They may range from compliance with the OECD 1995 Recommendations and 2005 OECD Guiding Principles for Regulatory Quality and Performance to explicit tests such as “net benefits for citizens”, Benefits superior to Costs, etc (OECD, 2008b). They may apply to RIA as in the case of the U.S. *OIRA*, and to the *ex ante* screening of regulations as well as to the lifting of the stock. Many oversight bodies are created to monitor administrative simplification initiatives and to reduce administrative barriers, in general through the implementation of SCM projects.

Defining powers and responsibilities with checks and balances

The crucial point is to define powers and responsibilities, with a system of checks and balances supported by well-powered incentives. While a clear mandate is necessary, it alone is not sufficient. *De Jure* powers often diverge from situations *de facto*. Even with the best and most powerful mandate, oversight bodies need to find and exert “carrots” and “sticks” to achieve their goals through a system of checks and balances. As most regulators know, many promising objectives and pledges based in law can prove frustratingly unenforceable. In practice, the way oversight bodies have used their enabling powers has been through establishing of an array of a “soft power” based on incentives for regulators to comply with regulatory quality requirements. The goal has been to establish effective “bite” on practices, through a system of positive and negative incentives.

Table 3 presents key functions and powers delegated to oversight bodies (see also Table A.1 in the Annex). The important element is the system of positive and negative incentives through which oversight bodies will perform their responsibilities. Successful bodies such as ACTAL, OIRA, OBPR, BRE have developed an array of incentives supporting their mandate. They know that threats and force might be less effective than proper inducements and encouragement. In the long run only the use of strong incentives has been able to change the deep-seated regulatory culture in those countries, turning these leading oversight bodies into successful “regulator of regulators”. Effective oversight bodies have exercised powers to convince regulators in some cases, and in other cases to force regulators to take into consideration the potential costs that their regulatory activity can generate in pursuing a certain goal or trying to create a given benefit for society.

In terms of “sticks” or negative incentives, oversight bodies also often play a role of “gatekeeper” to obtain the final political decisions by government. This veto right is presented in a specific column in Table A.1 in the Annex. These bodies are bestowed with the power to clear or accept a draft regulation and/or its RIA report, giving them, in effect, the power to delay, if not block, the presentation of the project to the cabinet until the quality of the submission has reached certain standards. This deterrence, which is based on the prospect of an easier and quicker overview procedure, can become a powerful incentive for regulators to work harder and earlier.

The gate-keeping power can sometimes be exercised in parallel or after the final political decision has been made. In Mexico, the publication in the Official Gazette of an approved regulation, and thus its entry into force, requires official certification from *COFEMER* indicating that the regulation was reviewed or had obtained a review dispensation.

However, the full veto right also presents risks, and most long-lasting oversight bodies have avoided trying to control the flow of information to the Cabinet and, thus, appearing to exert a real “veto”. Such power would be beyond oversight and transform the body in the final substantive regulator, with the risk of significant backlash. Some oversight bodies have also developed strategic alliances with other reform authorities to increase their real and perceived control powers. They have indirectly used peer pressure from other regulators before or during a Cabinet session.

Oversight bodies promoting peer pressure at Cabinet level, for example making regulators responsible for their RIA through a signed certificate, can be very effective in collegial style governance systems. A number of jurisdictions rely on soft but significant powers. This may help explain the more seemingly limited powers of the EU *IAB*, compared with the U.S. *OIRA*, to reject or “return” impact assessments and policy proposals to the agencies (Allio, 2007, p. 7; OECD, 2008b). However, in countries’ political settings, excessive reliance on peer pressure may have its limits, as censuring between ministries can be quite rare, especially, in the case of a coalition government.

Table 3. Key functions of regulatory oversight bodies in selected OECD member countries

	Name	Functions			
		Co-ord	Advic	Chall.	Advoc
AUS	Deregulation Group (comprising the Deregulation Policy Division and the Office of Best Practice Regulation) in the Department of Finance and Deregulation	x	x	x	x
CAN	Regulatory Affairs Sector (TBC-RAS)	x	x	x	
DK	Simplification & Better Regulation Unit	x	x	x	
DK	Better Business Reg. Div. of Danish Comm. and Companies Agency		x		
EU	General Secretariat/Impact Assessment Board (IAB)	x		x	
GER	Better Regulation Unit	x		x	
GER	National Regulatory Control Council	x	x	x	
IT	Regulatory Impact Analysis Unit at DAGL (Legislative Office)			x	
IT	Unit for Simplification and Better Regulation (USQR)	x	x	x	
IT	Administrative Simplification Office (UANAS)				x
JP	Subcommittee for Regulation and System Reform (of Government Revitalisation Unit)				x
JP	Administrative Evaluation Bureau	x	x		
KOR	Regulatory Reform Committee (RRC)	x			x
KOR	Regulatory Reform Bureau	x	x	x	
MX	Regulatory Improvement Commission (COFEMER)	x	x	x	
NLs	Administrative Board for Administrative Burdens (ACTAL)		x		x
NL	Regulatory Reform Group	x	x	x	
POR	Secretary of State for Admin. Modernisation (SEMA)		x		x
POR	Secretary of State for the Presidency of the Council of Ministers/Centro Juridico (CEJUR)	x	x		
POR	Regulatory Reform Unit		x	x	
SWE	Better Regulation Council		x	x	x
SWE	The Swedish Agency for Economic and Regional Growth (Tillväxtverket)	x	x		x
SWE	The Better Regulation team, Division for Entrepreneurship at the Ministry of Enterprise, Energy and Communications	x	x	x	x
UK.	Better Regulation Executive	x	x	x	
UK.	Reducing Regulation Committee			x	
UK.	Regulatory Policy Committee		x		x
USA	Office of Information and Regulatory Affairs (OIRA)	x	x	x	x

Source: OECD Secretariat, based on an inventory from Desk based research, EU 15 reports and other relevant information.

The management of public exposure of bad regulation is another incentive mechanism that oversight bodies have used to support their mandate. Often the fact that regulators know that an oversight body can publicly release their submission (*i.e.*, regulation, RIA, SCM measurement, *etc.*) has created a powerful incentive. This induces them to improve the quality of their efforts in a more effective way than through internal official challenges but confidential correspondence. Actually the difference between “advice” and a clear “challenge” is blurred if the former is published. In Sweden, the *Better Regulation Council* is considered an advisory body. However, the publication of its opinions provides an incentive and represents a challenge for ministries and agencies preparing their impact assessments.

The possibility of publishing regulators’ general performance through the benchmarking process is also a strong incentive for gradually improving compliance with the regulatory policy requirements. For example, the annual ranking of ministries and regulators’ quality indicators on their RIA published by Australia *Office of Best Regulation* (OBPR) is considered a useful driver for regulatory improvement.

Governments have also supported oversight bodies by using financial and other economic “carrots” to encourage regulators to comply with the regulatory policy. In Australia, the Commonwealth and the States and Territories agreed on 29 November 2008 to a new National Partnership Agreement under which States and Territories are eligible for facilitation and reward funding to encourage delivery of reforms that assist in the creation of a seamless national economy. Some countries like Italy, have established connections between the evaluations of senior officials and pay performance incentives and achievement of the objectives set by their services in terms of regulatory quality (OECD, 2010a).

Overall, oversight bodies have tended to use an array of soft powers to enforce policy according to the measure reviewed, mixing their mandate prerogatives with efforts to convince and educate. For example, the United Kingdom *BRE* did not dispose of any formal powers to call regulators to account. Its effectiveness in supporting and challenging regulators efforts was thus linked to the political commitment by the head of government and head of BRE’s access to top policy makers. Under the more recent settings introduced with the Reducing Regulation Committee, an explicit gatekeeping mechanism has been introduced to enforce the discipline, in particular the respect of the One-in, One-Out Rule. Of course, soft power is hard to judge from the outside and looks more like an invisible deterrent which substitutes for clear “sticks”, such as budget cuts, if performance is inadequate.

Soft power and public exposure work to certain extents. Usually the practice of “naming and shaming” works well in countries with transparent practices and an open debate. Soft power can also work well in more centralised and hierarchical systems where internal dissent carries high political risks and international judgement is influential. But the soft power process can break down when a divided government exists. Praising and scolding can also become less effective when cases become highly conflictive.

Ensuring public support

The success of oversight bodies depends crucially on political and public support, with constituencies that need to be nurtured. Both complement their formal and soft powers and reinforce the credibility and professionalism of the organisation’s staff. Besides direct political support, there is often a need to nurture non-governmental interests either from businesses, consumers, society or academia. A first option is to establish advocacy bodies such as the *ACTAL* in Netherland, and more recently the *BRC* in Sweden or *NRCC* in Germany, or a high-level independent advocacy taskforce like those set up recently in Canada and Australia to assess and re-energise the regulatory policy (OECD, 2008a).

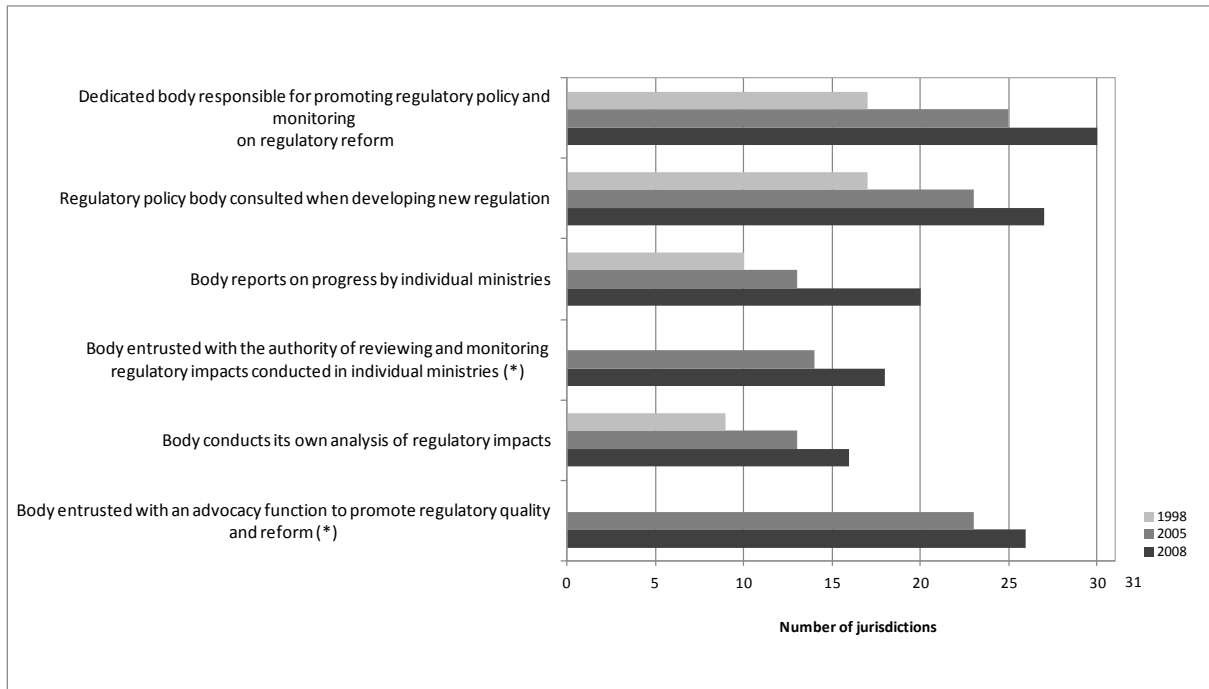
Another option has involved establishing permanent consultation bodies where key stakeholders can encourage and assist the policy implementation. This is the case for Italy's *Permanent Board for Simplification (Tavolo permanente per la semplificazione)* established in 2007 as a consultative body to reach consensus on simplification issues among the institutional bodies and the social partners, represented by business associations, trade unions, as well as the regions and local authorities. To a large extent this type of permanent support has also been provided since the late 1990s by the United Kingdom *Better Regulation Commission* – replaced in 2008 by the *Risk and Regulation Advisory Council (RRAC)* – which supports, challenges, discusses or evaluates the work of the official oversight body – in this case the *Better Regulation Executive* and predecessor organisations. In 2010, the Better Regulation Strategy Group has been set up to channel the advice and input from businesses, citizens and NGOs to support and guide the government policy for better regulation.

However, private sector support can also be ambiguous. Some of the organised interests such as industry associations may express doubts about the added value of having an independent regulatory oversight, which limits the scope of their traditional and corporatist links to regulators in specific sectors.

Institutional design and location

The institutional building efforts accomplished by OECD countries since 1998 is impressive (Figure 3). The number of countries with an oversight body has increased significantly, together with an increase in the powers and analytical responsibilities of these bodies: in 1998, only 17 countries out of the 27 surveyed had a dedicated body responsible for promoting regulatory policy. In 2008 almost all OECD member countries and the European Commission reported having one.

Figure 3. Institutional arrangements to promote regulatory policy (Part 1)



Notes: Data for 1998 are not available for the European Union, Luxembourg, Poland and the Slovak Republic. This means that this figure is based on data for 27 countries in 1998 and for 30 countries and the EU in 2005/2008. (*) No data are available prior to 2005.

Source: OECD Regulatory Management Systems' Indicators Survey 1998, 2005 and 2008, www.oecd.org/regreform/indicators

In this context, countries have faced significant challenges in finding an appropriate institutional design, reflecting countries' specific circumstances. This is illustrated in a variety of institutional arrangements. Finding a right formula for successful oversight has much to do with the design and function of the body and its relationships with other institutions. A number of important aspects deserve careful consideration.

Contextual and historical aspects

Countries have developed oversight bodies rooted in their traditions for public governance. The architectural design requires an understanding of key administrative and governance aspects such as:

- Strength of the centre of government *vis-à-vis* sectoral ministries; principle of ministerial responsibility; experience and level of independence of sectoral regulators.
- Administrative tradition in particular the existence of adversarial, collegial or collaborative relationships between entities of the public administration (ministries, regulators, etc.).
- Constitutional set up defining clearly the extent of regulatory power devolved to ministries and regulators, versus Parliaments.
- Decentralisation or regulatory powers and other aspects related to the existence of formal or informal networks, and
- Size of the country, size of the administration; availability of qualified staff for implementation.

A successful design will reflect the interplay of political forces and social shifts, and may take years to take place. These forces have also shaped the operation of the oversight body and influence its location and reforms. While the UK has a very mature and advanced institutional setting for regulatory reform, this reflects decades of trial and empirical testing. In this country, the oversight function has evolved while being strengthened through successive changes over the years, and under different governmental and political settings.

Japan also experienced a gradual and evolving institutional building which is ongoing with the new government elected in 2009. The new government established the Government Revitalisation Unit, under which a subcommittee for regulation and system reform has also been established in 2010, following on the previous council of the Promotion of Regulatory Reform (CPRR). Several steps led to the current *Council* and its *secretariat*. The Provisional Commission for Administrative Reform played a key role in the 1980s in promoting deregulation and privatisation. The Deregulation Committee played a similar role from 1995 to 2001. The Council for Regulatory Reform (CRR) was its successor, established within the Cabinet Office rather than the Ministry of Internal Affairs and Communications (MIC), to increase its independence and to strengthen its function to provide advice directly to the Prime Minister. The CPRR was established in 2007, with basic functions that are essentially the same as those of the CRR.

Not all oversight bodies are established smoothly nor is their evolution gradual or even organic. Sometimes the oversight body emerges as a result of a crisis. For instance a massive regulatory reform drive during 1998-99 was undertaken in Korea in the aftermath of the Asian financial crisis. The massive 50% reduction of existing regulations realised by the *Regulatory Reform Committee (RRC)* would have been impossible without the public and political support that emerged after the crisis (OECD, 2007b; 2010b). A similar situation triggered and explains the emergence of the 1995 first regulatory policy in Mexico and its institutionalisation under the *COFEMER*. The policy and its oversight body were concrete responses from the government to the business sector's urgent demands confronted with a gruelling economic situation following the macroeconomic crisis and the entry into force of the North America Free Trade Association (NAFTA) (OECD, 2010b).²⁵

Main design aspects

Core functions can be performed by one or more bodies. Large countries with a strong centre of government have often concentrated the functions into a single powerful oversight body like *OIRA* in the US or the *Treasury Board of Canada Secretariat*. Other countries with consensus-based governments have preferred a more decentralised approach, which is the case for the Nordic countries. The recent history reflects a situation of flux, where different dimensions and design issues are involved. Some key design aspects are discussed below.

Committee versus ministerial responsibility

Schematically, the two most common alternatives involve either setting up a collective body in the form of a committee, Council, or task force, or entrusting the organisation to a single individual responsible for the regulatory policy portfolio.

A committee operating as an oversight body has the advantage of a greater level of authority, than that of an individual person, as well as a collegial approach fostering consensus. On the other hand, a single individual reporting to a minister will in effect benefit from the ministerial authority in relation to other bodies in government. In theory, a committee-type oversight body can prepare the work for decisions to be endorsed in collective action by the Cabinet. This approach has been favoured by small Nordic countries where compliance and self-assessment was part of the administrative culture. In the Netherlands, the establishment of the *Steering Group for Better Regulation* has helped to strengthen the links between the key regulatory ministries and the other oversight bodies. The Steering Group for Better Regulation, chaired by the Prime minister, meets every quarter and brings together the Ministry of Interior, Ministry of Justice, Ministry of Finance and Ministry of Economic Affairs. It is supported by an officials group. It reviews progress reports on Better Regulation policies and prepares the ground for cabinet and parliamentary reports. Germany has also followed a committee-based approach. *The Committee of State Secretaries on the Reduction of Bureaucracy*, which is chaired by the State Minister at the Federal Chancellery, co-ordinates the federal government's programme on Bureaucracy Reduction and Better Regulation. The European Commission has also privileged this "political" and collegial dimension with the establishment in 2006 of the *Impact Assessment Board (IAB)* under the office of the Secretary-General of the Commission.

The alternative is to choose a "champion" for regulatory reform, as illustrated in Australia with the Minister of Finance and Deregulation, or the Minister for Normative Simplification in Italy. The advantage advanced for this champion-based approach has been the possibility of ensuring a quicker response, more effective and efficient management and a higher degree of accountability. As well, some countries have found that a collective decision-making forum encounters difficulties to reach decisions especially if they are hard ones. Collective decision making can make them reach the lower common denominators. A danger amplified in case the membership of committee has been set too large.

In many cases, the selected "champion" has been an economic-oriented ministry, such as the Ministry of Finance or Ministry of Economy, as the goal of regulatory improvement has been connected to micro-economic issues, for which businesses are an obvious political constituency. In Mexico, the Ministry of Economy is the champion for regulatory reform efforts, with a vice ministry for competitiveness. In Denmark, the Ministry of Finance and the Minister of Economic and Business Affairs, through the Danish Commerce and Companies Agency (DCCA) play a leading role. The *Regulatory Reform Group* attached to the Ministry of Finance plays a leading role in the Netherlands. In some countries, significant responsibility is also vested in a ministry with institutional responsibilities, such as the Ministry of Interior or the Ministry of Justice. For example, in Greece, the Minister of Interior is in charge of the implementation of the Better Regulation policy.

Rules for the governance of the oversight body

Oversight bodies need clear rules and procedures in order to perform efficiently as organisations and keep their institutional memory. These rules can also help to smooth out the work and responsibilities between appraisers and the head(s) of the oversight body. Some oversight bodies have in particular developed regular decision-making procedures for the management and well functioning of the organisation. These rules take into account the particularities of the rulemaking corporate cultures, for instance establishing specific rules to exercise the “challenge function.”

They include for example rules for the operation of the executive board of the oversight body. The European Commission’s *IAB* has developed rules of procedure in 2007, governing not only the composition and voting of the five-member *IAB* but also important aspects of the reviews of *IAs*, transparency of *IAB* deliberations, and sources of internal and external expertise.

Oversight bodies have usually developed procedures to manage the advice and checks on the quality of the assessments provided. The members of the German *NRCC*, *for example*, have organised themselves into “reviewers” (*Berichterstatter*) for specific policy areas. Each reviewer drafts a proposal for decision for every new draft bill falling in his/her area of competence. The proposals are then discussed by the *NRCC* board and formalised in an official opinion. The opinion is not only forwarded to the lead ministry but is also included in the annex to the draft bill which is submitted to the Federal Cabinet and subsequently passed on to Parliament together with the Cabinet decision. *NRCC* opinions are public and draw the attention of decision makers and stakeholders to the administrative costs involved in the regulatory proposal.

As the sophistication of the oversight process increases, oversight bodies have to avoid conflict of interests arising from their different core functions. For instance, firewalls need to be established between the functions of advice for drafting new regulations and the challenge function. This was a primary justification for creating the Centre for Regulatory Expertise (*CORE*) in 2007 in Canada. The *CORE* provides expert advice and services to help departments build their internal capacity to develop sound, evidence-based regulatory proposals. The *CORE* facilitates the development and promotion of best practices and learning opportunities for federal regulators.

Locating the oversight body: autonomy versus access

The location of the oversight body involves a number of trade-offs within the State apparatus. Often location decisions have reflected significant turf wars between key public authorities. Any specific location has advantages as well as disadvantages. These tend to change as the policy matures. The choice of location also involves choices, with the wish to grant some *autonomy*, so that the unit can function effectively (including with selection, hiring and firing of the head, budget, powers), while preserving *credibility* through access to the key decision makers, *accountability* to the political level and *relevance* in the machinery of government.

Objectivity and credibility of the oversight process are essential. The location needs to reflect the intended relationship between regulators and the reviewer. Several options have been envisaged to ensure credibility. First an informal understanding can support technical autonomy. For instance, the Australian *OBPR* enjoys substantial technical autonomy without a law or being located outside of the administration. In the United Kingdom, the setting up of the independent Regulatory Policy Committee in 2010 responds to the need of objectivity and credibility of the oversight process, through the expression of a public opinion.

When advocacy and advisory functions are concerned, countries have often ensured formal autonomy through the setting up of a "Committee type" of body. This also extends sometimes to more formal gate-keeping functions. For example, in Germany, the establishment of the *NRCC* as an independent advisory and control body outside the government structure was preferred to a location close to the Chancellor. The NRCC has formal authority to oversee the quality of the analysis related to the administrative burden reduction programme. The NRCC is thus an important gatekeeper of, and has considerable political leverage over, the government policy and regulatory agenda, which is reflected in the fact that the Federal Ministries seem to follow most of its opinions and recommendations. However, its mandate is focused on administrative burdens only and it has an advisory role.

In some countries, "Committee-type" bodies are also often opened to non-governmental participants. For instance, *ACTAL* in the Netherlands is a committee-based agency governed by 3 members of the Board and a 13 members Secretariat. The Board members are private citizen with experience/knowledge in the field of administrative burdens nominated by the Government. The secretariat consists of civil servants with background in government and the private sector.

From a pragmatic point of view granting autonomy applies to a committee-based and to an agency-type oversight body. An important advantage of an arm's length agency, is that the bestowing of an autonomous budget and hire-and-firing staffing rules will help the organisation improve its managerial performance. This is the case of the Danish *Better Business Regulation Division* (DDCA), inside the Danish Commerce and Companies Agency. The fact of being an agency has permitted a move to cutting edge approaches in terms of using new tools such as focus-groups and panel tests as well as measurement methods.²⁶

Various options and combinations are possible. All the organisations below relate mostly to the Executive, but, as indicated in the second row of the table, bodies can also be attached to the Legislative and Judiciary.

Table 4. Autonomy vs. organisational setting

	With a Formal Organisation	Without Organisation
Inside the Executive Branch	Ministerial Unit Centre of Government Unit Inter-ministerial Unit Ministerial Agency Governmental Agency	Ministerial Committee Interagency working group
Outside the Executive Branch (autonomous)	Independent government watchdog office, such as an auditor or ombudsman or inspector general External advisory bodies Technical body attached to the legislature External nongovernmental body such as advocacy groups, think tanks, academic researchers, and the news media	Legislative committee Judicial review by the courts Businesses councils Peer review forum

An oversight body will also need access to the highest political level to preserve influence within the government. Excessive autonomy may result in more limited access to the decision makers. As a result, many governments have opted for establishing the oversight body close to the Centre of Government to ensure that its outputs are embedded into Cabinet processes. Moreover, the role of "regulating the regulators", is eminently an executive branch function, which has to be located close to the core of the government decision-making process. This was originally the reason for locating OIRA within the Executive Office of the President in the United States.

In recent years, these arguments have gained attraction in a number of OECD countries. Many countries have set up strong central oversight body close to the Centre of Government, either as a Committee, a Minister without Portfolio, a unit or an agency, to provide momentum and muscle for regulatory policy. According to recent OECD indicators, there has been a rapid shift in the location of these units toward the centre of government. Currently 20 of 22 countries with such units locate them either in the Prime Minister's Department/Office of the President or else the budgeting agency, compared with fewer than half of the countries with dedicated reform bodies in 1996.

The success of the U.S.'s *OIRA* since its inception in 1981 lies closely with its existence as part of the Executive Office of the President, in a core and powerful executive arm, with authority upon most of the federal administration rulemaking undertakings.²⁷ The importance of ensuring access to policy making is also patent in Germany where the Federal Chancellery has established a special *Better Regulation Unit* to co-ordinate the administrative burden reduction programme for business, working in tandem with the dedicated external advisory agency, the NRCC.

Locating an oversight body at the centre of government (COG) may also present some drawbacks. The COG may lack the institutional capacity and resources to carry out regulatory review and oversight. In many countries, the traditional nature of a PM office is to be a neutral, non-partisan and non-adversarial entity, specialising in improving the information co-ordination and occasionally in monitoring progress. Second, the competencies and the closeness to key political constituencies may be lost at the top of the government pyramid, with many competing political demands. An oversight body placed in such a horizontal position could lose track of regulatees' opinions and demands. This location will make it difficult to nurture a political base for quality regulation. Hence, some countries have chosen to move their oversight bodies back from the Centre of Governments to more economics ministries. For example, in the United Kingdom, the Regulatory Impact Unit moved from the Cabinet Office to the Department for Business, Enterprise and Regulatory Reform, and was renamed the BRE in the Department for business industry and Skills. In Canada, the oversight body was transferred from the Privy Council Office to the Treasury Board Secretariat, which is another central agency in the Center of Government.

In many countries, regulatory policy reflects a dynamic policy agenda, with institutions in flux. For example, in the Netherlands, the first main institutional home for the oversight body was the Ministry of Justice in the 1980s, responsible for legal quality, defined then to include early forms of impact assessment on new regulations. The launch of the *MDW* programme in 1994 broadened the regulatory policy agenda linking it to market liberalisation as well as to legal quality. As a result responsibility became shared with the Ministry of Economic Affairs and the Ministry of Finance. In a further step, the government created the *IPAL* (the Inter-ministerial Unit for Administrative Burdens, to be transformed into the Regulatory Reform Group in 2003, a joint unit of the ministries of Economy and Finance). *ACTAL* was created as an advocacy agency in 2000 and has continued to support the policy since then. In the United Kingdom, the oversight body changed name five times and moved its reporting obligations from Department of Employment, to Department of Trade and Industry, then to the Cabinet Office, and back to the Department for Business, Enterprise and Regulatory Reform (BERR), recently renamed Department for Business, Innovation and Skills (BIS).

Merging or demerging the various functions

The implementation of regulatory policy is subject to policy cycles. A growing number of European countries have not only changed location but also modified the oversight structures in recent years. With the growing policy agenda, many countries rely on a “network of oversight”, with specific oversight bodies responsible for specific tools (RIA for *ex ante*, SCM for *ex post*) or for exerting distinct functions (training and support, vs. challenge and control). In some countries, national audit offices have also developed interest in the Better Regulation Policy, such as the NAO in the UK. In a number of countries, the oversight bodies operate at the centre of government as a focal point, influencing a very large set of substructures among regulators and ministries. Networking approaches also involve transaction costs, with a potential for complexity, duplication and overlap. The economic and governance costs of managing a network are increasing (OECD, 2009c). Other countries have gone the other way towards a merged and consolidated approach, as illustrated by the Netherlands above. The merger also signalled that Better Regulation policy in the Netherlands had reached a certain level of sustainability across coalition and cabinet political cycles.

Transparency and accountability rules

As oversight bodies are entrusted with significant powers, they have also been harnessed with clear transparency and accountability rules, to make sure that their approach and processes can resist external scrutiny. For instance, in the U.S. *OIRA* functions under strict public access to information obligations and rules, which have even been reinforced recently. *OIRA* can in effect be asked to provide information about the review and process and communications with outside parties. *OIRA* even goes further than EO 12866 by posting its return letters, prompt letters and other important documents on its public web site.²⁸

Transparency rules and mechanisms are necessary for efficient oversight as they can help to overcome obstacles and distrust. The Chairman of the Australian *Productivity Commission* has made the case that the strength and resilience of reforms in Australia has been assisted by the transparency of the policy process in developing reform options and community acceptance of the reform outcomes (Banks, 2007). As a result, some oversight bodies have developed a set of rules for transparency as part of fully fledged communication policies. The United Kingdom *BRE* lists a number of approaches which it is deploying to communicate the government’s Better Regulation agenda and strategy (OECD, 2009c).

Oversight bodies also need to be accountable through appropriate mechanisms that ensure fairness and credibility. As noted above, many oversight bodies have been obliged to account to the government for progress in the implementation and enforcement of the policy. In *Australia* since 1996, the Productivity Commission has been producing annual reports on *Regulation and its Review*. These reports also cover developments in regulatory policy at the Commonwealth and state levels. More recently the Deregulation Group has been preparing for the Minister for Finance and Deregulation regular reports to Cabinet on progress with the better regulation agenda.²⁹ Such a reporting exercise, clearly signalling the gaps and areas for attention, can be far superior to a command and control mechanism. For example, though *BBRC* in Denmark has no capacity of direct action on ministries, the regular reporting provided to the Prime Minister has created incentives to show progress, and to engage ministries in healthy emulation.

Some oversight bodies have an explicit obligation to report back to parliament or congress and/or are subject to national auditing offices. Perhaps the best case in this is the obligation for *OIRA* to report annually to Congress on progress in burden reduction and regulatory impact assessment.³⁰ In the case of the auditing requirements an exemplary effort is the one spearheaded by the United Kingdom *National Audit Office (NAO)* which has over the last few years carried out successive audits of Better Regulation policies and processes.³¹

Human and financial resources

Regulatory oversight bodies need to be endowed with human and financial resources to perform their functions. These are necessary for implementation and follow up. The issue is whether and how to add a secretariat or organisational support to the policy. A champion or a committee can increase its effectiveness in implementing the policy with a specialised unit or organisation. A permanent capacity is necessary to ensure continuity in the process and to push the agenda through, particularly when "committee-type" bodies involve part time members. An increasing number of countries have therefore set up *specific administrative structures* to support the "political" committee or minister in charge of taking decisions. These secretariats can be further strengthened becoming full-fledged organisations in charge of implementing regulatory policy, through political cycles.

Adequate resources are not only needed to make an oversight body competent and effective, but lack of these can also compromise the proper fulfilment of the tasks. For instance, the shortage of funds and adequate manpower can make oversight vulnerable or prone to capture or to bias if most of the information available is provided by interest groups or regulatees. If the oversight body cannot afford analytical capacity, errors may occur when challenging regulators, which could be used by interest groups to their advantage.

Resources need to be sustained over time. The implementation of tools such as RIA can require five to ten years of arduous work, to have durable effects to be felt throughout the whole regulatory and administrative system and the economy as a whole. Turning away from overregulation is not an easy task or a quick win exercise, even if it can produce long lasting effects in terms of productivity. Yet, regulatory policy is relatively inexpensive compared with other policies. The cost of a single RIA, even if it can be significant, is often small compared with the economic magnitude of the issues at stake. The return rate can be remarkable if all the direct and indirect external effects and savings are taken into account, with the use of instruments such as RIA or the SCM.

However, many countries are facing significant resource issues, with implications for implementation. The experience of France, which has been testing and implementing RIA since the late 1980s is also a testimony for the need to support the policy with adequate resources and in the long run—in addition to political backing (Malone, 2009). The Italian case also highlights the challenges for implementing a fully fledged RIA policy.

Regulatory policy requires a small number of staff, but they need to be highly qualified. The units that are established are generally small by any government standard (see Table A.2 in the Annex). However, they also mobilise significant official expertise in ministries, and even in the private sector when assessing and challenging regulations. These numbers tend to underestimate the total as they do not count the many officials, and experts from the private sector related in one way or the other to improve the quality of regulation and who are not regulators themselves.

Challenges in managing resources

Oversight bodies are still facing challenges. First, they have to deal with to the thorny question about why governments need to invest in more bureaucracy just to reduce bureaucratic failures and regulatory costs. In the context of the economic crisis, this question is even more acutely felt, threatening the mere existence of this type of institution in some countries. Second, they need to prioritise the investment of resources across the various functions and policy areas. These challenges are also felt by core government bodies, such as competition authorities, and they force oversight bodies to manage tradeoffs among various types of investment in regulatory policy. This involves a constant struggle to find a proper balance between achieving results in the short term ("quick wins") and investing in long-term policy goals, while being accountable and transparent, and communicating results to build a political constituency.

Some bodies have decided to prioritise the efforts and to focus limited resources in one or two of the core functions to address this challenge. Audit offices can also conduct performance audits and question the rationale of some of the policy investment, helping to refocus the efforts. For example, the significant investments in measuring administrative burdens have been subject to some scrutiny in certain countries, compared with the political outcomes, and the results as felt by citizens and businesses.

Attracting highly qualified Staffs

Attracting adequate competencies is key to quality regulatory oversight, starting with the head of the body. The real and perceived authority of an oversight body is often related to the hierarchical status, charisma and credibility of its leadership. In some cases, the designation of the head is subject to thorough scrutiny. For example, the head of the U.S. *OIRA* needs to be confirmed by the Senate. This has conferred him/she with a sense of independence in addition to ensuring knowledge and understanding of the demand of a politically-driven environment. In general, the head of an oversight body needs to have access to the highest political level to exert “soft power” *vis-à-vis* regulators.

The head can also be a board, in case of a “Committee-type” body or Council exerting oversight or advisory functions. For example, in Germany, the *NRCC* is composed of eight members appointed by the federal President for a five year renewable mandate upon proposal by the Chancellor. The members come from a variety of backgrounds in the public and private sector, and serve on an independent and voluntary basis, without compensation. The *NRCC* is assisted by a Secretariat located in the Chancellery. In the case of the EU, the *IAB* provides a collegial focus for the impact assessment process, with a five-member board, chaired by the Deputy Secretary-General of the Commission. Four additional members come from DG EcoFin, DG Employment, DG Enterprise, and DG Environment, covering core areas of economic, social and environmental impacts.

A second crucial aspect is the need to attract and retain capable professionals. Most oversight bodies are staffed by a mix of lawyers and economists supported by experts in other fields of social science and policy, life science and physical science. It is often important to ensure adequate staffing with economists and specialists in social sciences to balance overly legalistic approaches. Finding key capacities and competences can be difficult in particular in small countries where the pool of talent needs to be shared with the private sector or with other well-resourced agencies such as sectoral regulators. Many oversight bodies have also developed training activities, which is also part of their role in providing advice and support. For example, in Portugal, CEJUR has been engaged in training law-based professionals and hiring economists to develop and implement RIA effectively as part of the *Legislar Melhor* Programme. Another option to foster multidisciplinary approaches is to rely on the secondment of experts from ministries or even from the private sector. For instance, the German Chancellery’s *Better Regulation Unit* is staffed with experts from line ministries. Staffing can also be challenging, when provided through part time appointment. For example, over 2007-08, the Italian Unit for Quality Regulation (*USQR*) was staffed with senior and highly qualified advisors, but on a part-time basis (OECD, 2009d).

Providing attractive salaries and incentives is also challenging in the context of public service remuneration policies. Oversight bodies often face a shortage of talent and strong competition for the type of skills they need. The political nature of the task and its visibility are also useful to attract talented staff. Performance assessment has also been used in some countries to reinforce motivation and incentives. For example, in Denmark, the performance appraisal involves permanent secretaries of regulatory agencies and takes into account their ministries’ progress on Better Regulation.

Co-ordination mechanisms within and across jurisdictions

Regulatory policy is in essence a horizontal cross-departmental policy. It requires substantial co-ordination mechanisms to ensure policy coherence. For that, oversight bodies have relied on formal as well as informal co-ordination mechanisms inside the administrations. This requires setting up managerial and procedural steps for engagement and co-operation with regulators. Beyond national administrations, regulatory oversight bodies are also engaged in cross-jurisdictional co-operation, either with sub-national levels of government, or with their peers in other countries.

Cross departmental co-ordination at the national level

Two elements are essential for co-ordination: the setting up of appropriate contact points in the various ministries, as well as the definition of rules to define the relations with regulators and the nature of oversight. A general Table A.3 in the Annex presents more detailed information on co-ordination mechanisms and resulting operations.

Setting up networks with sectoral ministries and regulators

Regulatory oversight bodies in countries such as the United Kingdom, Canada, Mexico and Sweden, have often engaged in building networks of correspondents across ministries and the government apparatus in general (see Table A.3 in the Annex). The goal of these networks is to improve outreach, coordination and ownership of the policy by regulators. The United Kingdom first established a network of structures operating at different levels and established in the main regulatory ministries and agencies as early as 1997. The role of the sectoral better regulation units was to support to ministers and ministries in fulfilling the regulatory quality obligations (*e.g.*, undertaking impact assessments). These ministerial Better Regulation units also support and deliver Better Regulation processes and programmes. Another example comes from Sweden, where internal support units or structures for Better Regulation have been set up in ministries and government agencies. Each of the sectoral unit may deploy its own networking efforts, for example to reach out to the business community. Australia has also established Best Practice Regulation co-ordinators within agencies and departments who assist with identifying training needs to ensure that they are aware of the available guidance material and have the necessary capacity to undertake RIA. These co-ordinators are also responsible for championing good regulatory practices within their agency.

Defining rules of procedures and relations with the regulators

Oversight bodies often rely on specific administrative rules and procedures to ensure co-ordination and co-operation with regulators. Regulatory policy needs to strike a balance between the centralisation of certain powers to the regulatory oversight body, and the need to leave the regulators with sufficient autonomy. An effective oversight system is one that promotes the ownership of regulators' efforts, and incorporates quality regulation early in policy development, while maintaining some form of control and oversight. The challenge is to find the adequate mix of incentives and responsibilities where the efforts can be shared between the regulator responsible for the regulation or the simplification initiative and the central oversight body.

These rules usually include operational deadlines, guidelines, and ways and means to provide and receive support, mechanisms to co-ordinate and consult. They also specify processes for solving methodological or substantive discrepancies. These rules are based on the understanding that self-assessment or injunction to reform is not enough to achieve the operational goals of regulatory quality in practice.

Because of their importance, these rules and procedures are often defined jointly with the mandate, or in a core legal document. They are developed with more detail in specific bylaws manuals, guidelines and other circulars. There is a need to strike a balance between formalisation, which ensures transparency and accountability, and preserving flexibility in view of changing circumstances. As regulatory policy becomes more ambitious and demanding, governments have needed to clarify and expand the rules and standards for regulatory quality oversight. Thus, most oversight bodies have drafted—in some cases in consultation with stakeholders—specific guidelines to be followed by regulators in order to comply. For example, the U.S. *OIRA* follows and enforces rules of procedure established in *Executive Order 12866* and clarified in *Circular A-4*, including rules regarding the timetable to review agency Impact Assessments, the transparency of *OIRA*’s contacts with outside parties, and the opportunity for an agency to appeal an *OIRA* decision as well as guidelines for impact assessment. Since the beginning of 2009, *OIRA* has instituted a participatory process, with large consultation from stakeholders, to renew the *Executive Order 12866*. In the case of the EU, the Commission has polished and expanded its guidelines, with the latest *EU Impact Assessment Guidelines* published in 2009 containing about 50 pages, plus technical annexes and supplementary information.³²

Precise rules are designed to facilitate policy implementation with large administrative structures. In some countries, and for smaller structures, the heavy machinery might seem superfluous and, in some cases, counterproductive. For example in the Netherlands, the oversight body has considered that compliance with RIA requirements did not require a specific template, or compulsory analytical methods. The approach was that a performance approach based on good principles was superior to “command and control” approaches. In countries where a Westminster tradition prevails, a complex set of implicit rules has, in effect, strictly defined the regulatory processes. These informal conventions based on self-assessment and trust, have proved very effective in those countries.

The rules and procedures also illustrate differences in emphasis and approach. In Denmark, a central forward planning mechanism illustrates trust in how transparency and accountability can ensure compliance with quality regulation requirements. In this case, an enforcement system based on self-assessment and trust leaves significant discretion to ministries to decide if they need to submit their draft regulations relating to economic issues to the DDCA *Better Business Regulation Unit*, when they could result in “substantial” administrative burdens.

In terms of content, these rules and procedures typically verify whether regulations comply with formal or substantive quality criteria. For example, in Sweden, the *Better Regulation Commission (BRC)* assesses whether impact assessments meet the requirements set out in the new impact assessment framework. *BRC* rules indicate that it should not reflect on the “political aspects” of proposals. It confines itself to pointing out whether a proposal meets the requirements for impact assessment and whether it can create administrative costs for enterprises that are not justified in view of the purpose of the regulation. (see Table 3 in the Annex for more detail).

Other key rules concern targeting the process of regulatory quality oversight. Oversight bodies need to avoid spreading their quality check efforts over all regulations and to concentrate only on those with potentially higher impact. Canada *TBC-RAS* for instance uses a sophisticated system of triage. In Sweden the large volume of proposals to be reviewed has forced the *BRC* to develop rules for prioritising and selecting those most important for the state of stakeholders through simple clearing criteria that have been established through practice.³³ Australia has also an elaborated triage system.

Other important rules framing the relationship between the oversight body and the regulators include:

- *Forward planning* requirements and the rules and procedures that implement it can be one of the most effective instruments for regulatory reform in a country. For small jurisdictions, a forward planning mechanism may represent an acceptable substitute to a full fledged RIA. The tool consists of publishing periodically, for instance, once or twice a year, a list of proposed future regulations. Denmark has invested significant reform capital on such a platform for targeting better regulation efforts. In effect, through the Forward Planning which lists all future measures, the Regulation Committee has been able to target its limited resources to reviews that produce a maximum effect. The Forward Planning listing is so important that the platform actively interacts with regulatory ministries in the preparation of submissions (*e.g.*, asking to clarify or complete their submission) based on evaluations. Forward planning mechanisms exist in a number of jurisdictions, for example in the UK, or in the EU.
- Rules dealing with the management of the *timetable of the review procedures*. For example, in Germany the Joint Rules of Procedure require federal ministries to submit their draft bills to the NRCC as a part of the inter-ministerial co-ordination four weeks before they are forwarded to the Cabinet.
- Rules for *monitoring progress* and efforts of regulators. In Australia, each year the OBPR produces a report on the regulatory activities of departments and regulatory agencies which include details of whether an RIA was required to be prepared and the assessment of the adequacy of the analysis in the RIA. The OBPR also maintains a central online public register of all RIAs, including those assessed as inadequate. RIAs and the OBPR's assessment of RIAs are published as soon as practicable from the date of the regulatory announcement. A similar procedure is followed by the United Kingdom BRE, which carried out compliance tests to check that regulatory proposals are accompanied by an impact assessment. The development of the impact assessment library has in essence made the checks redundant. The NRCC checks the ex ante assessments of new legislation for adequacy and describes the overall developments in its annual reports.
- Dispute resolution rules. In the case of COFEMER in Mexico, a dispute between the regulator and the COFEMER, a mechanism provides for both parties to select a third party specialist from an official panel to provide the final opinion.

In addition to the internal rules, oversight bodies may also define rules for regulators, particularly for consultation. One of the most important rule is the “notice and comment” applied in the United States since 1945, as part of the Administrative Procedure Law. Consultation itself is being transformed with new technologies, as Web 2.0 tools and strategies offer the possibility of active participation through a web-based community.

These rules play a key role for the success of the oversight process. Of course, one should avoid transforming oversight bodies into process-oriented “paper pusher” organisations, just creating more internal bureaucracy. Excessive attention to process may be detrimental to substance. Excessive attention to process may be one of the downsides of locating an oversight body at the centre of the government.

The combination of all the formal and informal rules for a successful oversight is often more art than science. For example, the success of the Dutch system may be linked to a combination of measurement, involving the SCM for measuring and mapping of burdens); setting a time bound quantitative target (divided among ministries); a strong inter ministerial co-ordinating unit at the centre of government (the RRG and its predecessor, IPAL); independent monitoring via the watchdog, ACTAL; a link to the budget cycle to give incentives to agencies; and not least, political support, helped by the focus of the programme on administrative burdens which limits controversy (OECD, 2007a).

Building alliances within government

Besides the usual management and co-ordination mechanisms, successful oversight bodies have also built “political alliances” within governments. Two special “partners” are especially critical for implementing a Regulatory Policy. They require much involvement and diplomacy.

First, oversight bodies need to develop close and constant relationships with the official legal drafting body. This is justified as these bodies are the ultimate check before final decision by the government, and as quality regulation requires clear legal texts. In Mexico, similar symbiosis has been developed between the Mexican *COFEMER* and the Presidency *Consejeria Juridica de la Presidencia* (the legal councillor of the President).

A second strategic alliance concerns economics ministries and agencies, including Finance, Economy, Treasury and the Competition Authority. In a number of successful countries, including the U.S. and Australia, the budgetary process, which can reach far and deep, has provided an additional and powerful incentive for regulators to comply with the regulatory quality guidelines. For example, the fact that the U.S.’s *OIRA* is part to the powerful Office of Budget and Management (OMB) gives additional weight to its “soft power.” In Australia, the better regulation function is located within a central economic agency (the Department of Finance and Deregulation), which provides prominence to the regulatory reform agenda. Further, as the Australian Department of Finance and Deregulation does not have significant legislative responsibilities the potential conflicts of interest between better regulation and agency legislative activity are minimised. In other countries, the alliance stems from the concerns of economic ministries with the reduction of administrative burdens on businesses.

Co-ordination mechanisms with other levels of government

Given the multi-level reality of a regulatory environment, many countries have also developed explicit policy tools and approaches to address multi-level governance issues (OECD 2009d). Oversight bodies have developed co-ordination mechanisms with sub-national levels of governments and issues of wider international co-operation.

In many cases, oversight bodies developed complementary strategies of advice, capacity support, as well as benchmarking across sub-national jurisdiction to provide incentives for improvement. Federal states like Mexico, Australia, Belgium, Italy, Germany or Mexico, to name a few, have recognised the local dimension of regulatory reform as paramount and invested time, resources and political capital in this dimension. In Australia, relations across levels of governments and incentives to sub-national jurisdictions to contribute to a seamless national economy are paramount to the definition of a national regulatory policy agenda. For instance, the recent efforts on regulatory reform in Mexico under the leadership of the Ministry of the Economy, also involve benchmarking and co-operation with the sub-national levels of government. The German *NRCC* has also played an important role in co-ordinating and supporting initiatives between different levels of government to reduce administrative burdens overall. It is an integral part of joint pilot projects carried out by the federal government and the *Länder* on child credit, housing benefits, and student loan legislations (OECD 2010e).

International regulatory co-operation

The international dimension is increasingly important for regulatory oversight bodies given the globalisation of regulatory requirements and the competitive advantage that countries can gain from quality regulatory environments. In North America, the *OIRA* (USA), *TBC-RAS* (Canada) and *COFEMER* (Mexico) have established forums across national borders, following discussions and negotiations that initially took place at the time of the NAFTA Agreement. A significant role is also played by the U.S.-EU High-Level Regulatory Co-operation Forum which began in 2005 as a joint effort of *OIRA* and the European Commission. This process feeds into Transatlantic Economic Council,³⁴ which has been effective in bringing together top officials of oversight bodies and regulatory agencies, as well as leading scholars of regulation, to learn how the U.S. and Europe each handle common problems and to gain insights on new options (OECD, 2008b).

In Europe, the network of Directors and Experts on Better Regulation (DEBR) has also provided a forum for policy dialogue and direct exchange between oversight bodies. The DEBR network of experts on Better Regulation has provided an opportunity of exchange among its members.

Finally, the OECD itself has certainly played a useful and unique role on this dimension as an international intergovernmental organisation, providing a forum for exchange of best practice, analysis and a source of reference with soft law and principles since the early 1990s.

III. ASSESSING THE PERFORMANCE OF REGULATORY OVERSIGHT INSTITUTIONS

Assessing institutions' performance is complex and requires a multi-dimensional approach. Setting up a successful oversight body that delivers on the policy's goals requires undertaking a political process, involving many institutions and core government agencies. It requires a vision for the future, and a good understanding of the institutional design. A "One size fits all" does not exist. What might work in one country at a given time might not work elsewhere at another time. Even a good design and a successful political launch are not enough to guarantee full success. Many other factors are at play, such as the short-term political agenda, luck and grasping opportunities at the right moment. A set of well designed and powerful incentives will also be necessary to change behaviours inside the government machinery and foster culture change among regulators.

Political support comes first and is essential. Without it, no real policy outcomes are to be expected. The political backing of regulatory quality oversight requires that the policy agenda be supported by a "champion". But politicians will commit if they are supported by a corresponding political constituency, with an implication of citizens and businesses calling for quality regulations. For instance, in Korea, within months after his inauguration, President Kim directed the cabinet to cut the existing regulations by half. The initiative was driven by the newly-created *Regulatory Reform Committee (RRC)* following the 1997 crisis. In Korea, political support did not wane as time passed, as this policy agenda was supported by a strong constituency. When a few months later the RRC reported lukewarm results achieved by ministries and agencies, the President ordered them to resubmit the plans so that the existing regulations could be cut down by more than 50% by the end of 1998 (OECD, 2007b).

The rise of regulatory quality oversight since the end of the 1970s reflects new social demands in the light of ever increasing regulations. These are in turn triggered by higher standards for health, safety and the environment, and by erratic policy responses to emerging or perceived risks. With several decades of experience, the link between society's needs, political demand and the economic and social outcomes delivered by oversight bodies is becoming clearer day after day. For instance, no OECD country has dismantled one established oversight body yet, and many have set up new bodies in recent years.

A direct assessment of the effects of institutions in terms of final outcomes would require detailed investigations in national settings, analysing strategies for policy implementation and achievement of policy goals. National audit offices have in some countries performed significant assessment of the missions of the oversight body, as was the case for example with the National Audit Office for the Better Regulation Executive in the UK. The role of independent and public audit offices reporting not only on the performance of the oversight bodies but also of the ministries and agencies complying with the policy has been very effective to strengthen the credibility of regulatory policy in various jurisdictions, such as the United Kingdom, Canada, the United States, and more recently European Union. The verification and examination of the quality of the efforts by RIA drafters by these audit offices have certainly strengthened the incentives for higher quality submissions. Further work is required in terms of indicators of performance, as well as perception surveys to analyse whether such institutions are in fact making a difference.

Important lessons have started to emerge from cross country work, including comprehensive sets of OECD country reviews, in terms of what works better and what does not. A recent study, the *Politics of Policy*, offers an interesting framework for assessing such institutional settings. The starting point is that a reform *per se*, is not the source of change but *a credible reform is*.³⁵ The study focuses on a series of characteristics that contribute to performance aside from institutional aspects analysed in Part II of this report. The corresponding drivers of performance are:

- policy coherence and co-ordination;
- institutional stability;
- adaptability and responsiveness;
- strategies and approaches for implementation, engaging the regulatory disciplines, and
- forging of a political constituency.

These will be analysed in this part of the study, paying specific attention to the issues of communication as well as the critical dimension of culture change. However, it should be clear that the current discussion has to be framed in a general perspective, as specific information on final outcomes for regulatory oversight is not yet comprehensively available in a way that would lend to quantitative cross country analysis.

Policy coherence and co-ordination

Successful public policies depend essentially on the ability for policy makers and stakeholders from the public and private sector, to reach and enforce inter-temporal agreements that are consistent across policy areas. In order to set and maintain the right incentive mechanisms these agreements require on one hand co-operation and co-ordination, and on the other hand a degree of coherence with other policies. Achieving policy coherence is a constant challenge for modern states, due to the multiplicity of policy objectives, reflected in a variety of regulatory functions undertaken by many different administrative bodies. There is therefore a need to establish focal points within national governments to resolve these tensions and ensure coherence for efficient policy implementation.

Regulatory oversight bodies have often been charged with this function, as was historically the case with OIRA in the U.S. Regulatory Impact Assessment is a core tool for policy coherence, and the institutional set up around impact assessment reflects the internal workings of government. In the European Union, the Impact Assessment Board has also been a tool to increase policy coherence among the different DGs. Implementing regulatory policy involves many different actors and stakeholders to produce high quality regulation. Regulatory quality oversight requires creating a set of incentives for regulators, resolving potential conflicts among stakeholders with diverging interests. It also requires co-ordination with other core tools of policy making, such as budgetary policy, and controls of the legality of the new proposed regulations.

Co-ordination is needed to forge long lasting policy agreements to overcome scepticism and opposition from important “players”, when they become subject to new regulations. Without these “agreements”, and common understanding, a policy would face greater difficulties for compliance and implementation, and risks being contested as soon as possible. Contestation can occur either in the media and in the public domain, or through the courts, or through passive implicit resistance to legal action. In some middle income and developing countries, inefficient regulations even have the scope to increase the risk of corruption, and shifts to the informal economy.

Locating the oversight body at the centre of government is in theory a way to ensure policy coherence. This location allows to draw from information flows and to build on core political power, to monitor rule-making processes. It contributes to establish credible enforcement powers to ensure regulatory quality. The OECD has often recommended locating oversight bodies as closely as possible to the Centre of Government in order to gain power and credibility. For instance according to a recent OECD report, the establishing of Germany’s *NRCC* Secretariat at the centre of the government has granted credibility as well as political weight to the system (OECD, 2010e). The European Commission has recently brought all the units and functions charged with regulatory quality oversight under its general secretariat.

Other features contribute to better co-ordination. A first is to involve “core institutions” to ensure a longer term perspective to drive the policy through the political cycle. For instance some countries have ensured that the heads of the oversight bodies be nominated by heads of state and confirmed by Parliament (e.g. the US *OIRA*). Another feature is to involve non-governmental members such as the Dutch *ACTAL* or the Swedish *Better Regulation Council*, where members of the board may come from a business background.

Web-based tools, and the use of e-Government and Web 2.0 also facilitates the co-ordination of oversight functions as well as the involvement of stakeholders. It has often reduced administrative compliance costs for regulators when preparing, consulting, submitting and communicating their RIAs through the Internet/Intranet.

Another long-term objective of regulatory policy is to ensure consistent policy making over the long term. The goal is to avoid a “fragmentation of public policies” where each interest group inside or outside the government fights and drives its pet policy. A successful oversight body is the one which ensures and encourages consistency with other key policies and its driving institutions, such as those improving competition, competitiveness of SMEs, better corporate governance, privatisation or a structural reform on how the public administration works and delivers services to the private sector.

Australia presents an interesting and much admired example of policy coherence achieved with the long lasting advocacy of the *Productivity Commission*, calling for joined up agendas in terms of competition and regulation.³⁶ This example has just been emulated by New Zealand in 2010, which is in the process of establishing its own Productivity Commission. Another successful example is the Canadian *Regulatory Affairs Sector in Treasury Board (TBC-RAS)* which ensures coherence between the regulatory policy and the other Treasury Board policies including auditing, accounting, access of information, etc. of all the federal public administration.

Co-ordination and coherence with other levels of governments is also considered an important dimension for the overall performance. Improvements at national level may not be enough in those countries where sub-national levels of government have a significant say in regulation making. This is particularly true for state/regional or municipal levels – where most SMEs operate. Strategies for multi-level regulatory governance have been initiated and implemented for a long time by well established oversight bodies in countries such as Australia and Canada. More recently, countries such as Mexico and Italy, have come to fully realise the importance of the sub-national levels, and to make significant political and technical investment to improve policy coherence across levels of government.

Besides levels of government, oversight bodies need to reach out to other branches of the State, namely the Parliaments and the Judiciary, which have significant implications for regulatory quality. For instance, quality regulation requires effective and efficient enforcement mechanisms by the Courts. In many constituencies, regulatory impact assessments are only made on proposals by the executive, which are then discussed and significantly modified by Parliaments. Without significant attention to these parliamentary initiatives, much of the initial investment in RIA can be lost. However, the evidence and the analysis of the role of Parliaments are still lacking to shed sufficient light on this core aspect of regulatory policy.

Ensuring institutional stability

Institutional stability over time, and through electoral and political cycles, is also a key parameter of an institution's success. The survival of an institution over time reflects increased social acceptance. In some countries, the history of powerful oversight bodies for legal quality such as the French *Conseil d'État* can be traced back to several centuries.

Regulatory policies require significant time to be implemented. Only stability over many years can offer the deployment of long lasting changes to the stock of laws and regulations as well as the necessary change in habits, conventions and traditions framing the flow of new regulations. A volatile policy and institutional environment involving too many reforms, implemented in haste and without proper consultation, may enjoy poor prospects, when the policy initiatives cannot be sustained and mainstreamed beyond pilot projects.

Moreover, probably one of the most important aims of a regulatory policy—changing the mind-set of regulators—can only be achieved through decades of investment and hard work in improving the quality of the regulators. The current success of the policy initiatives in Australia can be traced down to decades of investment in policy making and in strengthening the function of regulatory quality oversight. Cultural change takes many years to percolate through the administrative apparatus and to overcome entrenched interests. In some countries, government have explicitly shielded their regulatory oversight bodies from the electoral cycles, with a nomination system disconnected from electoral variations as is the case of Germany's, *NRRC*.

Stability does not mean that regulatory policy should be fossilised and should not be reinventing itself. The UK example shows a dynamic set of policy initiatives over the years that have culminated in the current set of oversight bodies with the *BRE*, the *Regulatory Policy Committee* and the *Risk and Regulation Advisory Council (RRAC)*. These build on decades of continuous policy improvements, where the thrust of the policy was maintained over time, while showing that “Better Regulation is not a “one shot” policy, and should be part of a continuous process of adaptation.” The most recent changes have involved formalising the role of the Reducing Regulation Committee, as a body giving the clearance to regulate and enforcing the One-in, One-out system of Regulatory control, while leaving the Regulatory Policy Committee the role of providing independent technical advice and scrutiny, through a public opinion, which is expected to be submitted alongside any regulatory proposal. The recent changes introduced in 2010 have also involved establishing a Better Regulation Strategy Group, chaired by the BRE non-executive Chairman, and comprising a membership of business, consumers, workers and government, to inform the BRE's approach across the regulation agenda.

Time is also needed to move from the “low hanging fruits” toward structural changes with long-standing outcomes. In effect, some analysts have argued that investing early in a Standard Cost Model or in Regulatory Guillotines can help build a political constituency to ensure further changes. The easy results obtained through eliminating unnecessary regulations, help move further towards more significant legislative changes. For example, after many years of managing the SCM, the Dutch *Actal* and the *Regulatory Reform Group* have started to engage in more arduous reduction of substantive compliance costs.

Finally, stability is vital for the institutions' performance as trust from stakeholders only develops over time. The enforcement of procedures and instruments involves a complex array of incentives among regulators. Only stability can nurture the political constituency that will support the policy in the long run.

In a volatile policy environment, the effectiveness of the oversight function tends to be reduced. As for all policies, changing emphasis or focus too frequently reduces credibility. A strong but short-lived thrust will not ensure success if the policy and its institution cannot function durably. It will take time to prove that RIA can help reduce regulatory failures. Therefore, it is important to ensure a sustainable policy environment to facilitate implementation.

This may explain the search for bipartisan agreements on regulatory policy in Parliament, as well as broader consensus over regulatory reform. For example, the history of regulatory reform in Australia builds on successive governments which have introduced and maintained robust mechanisms of oversight and quality control, together with a long-standing advocacy body. This has facilitated the deployment of one of the most effective systemic regulatory policies in OECD countries.

However, stability should not become an excuse for complacency. Regulatory oversight bodies need to mind the risk of an “agenda creep”, as excessive longevity may lead to over-extending the limits or the mandate for regulatory policy. Oversight bodies may be tempted to expand their remit, instead of deepening their efforts to achieve results and address implementation gaps. Another risk is shifting the focus surreptitiously, for instance, moving away from “hard” core functions — such as challenging regulators’ impact assessments or advocating reforms — to more amiable ones, such as providing advice for administrative simplification or advocating reform at lower levels of government without any binding arrangement or incentive.

Adaptability and responsiveness

While regulatory oversight bodies require stability, they also need to adapt and be responsive to changing political priorities. Otherwise, they might become irrelevant and politicians might reduce their resources. Implementing a horizontal policy such as regulatory policy implies to constantly fight for political attention, with a renewed commitment to change. This is even more important for the bodies located within Centres of Government, where they have to compete with a long list of other policy priorities. Oversight bodies need to ensure that the leadership team is aligned on the goals and means of change. This also needs to be reflected through corresponding internal organisation and empowering of staff, motivating them for success. Oversight bodies also need to be responsive to the political signals transmitted by their environment as well as by stakeholders.

This also requires innovative approaches and tools. For example, the Netherlands bodies developed and deployed the Standard Cost Model, and advocated for it at European and worldwide. In the U.S., the *OIRA* developed “prompt letter” advocating reforms and offering new tools in addition to the challenge function. Innovation also requires taking advantage of new technologies, such as Web 2.0 technologies and paying attention to the role of social networks when new regulations are being proposed.

Adapting to changing circumstances may require transforming and reshaping the institution. The UK is one of the countries that have invested the most in this process of renewing the institutional design, finding new concepts for marketing regulatory policy over political cycles. The result has been a steady strengthening and broadening of Better Regulation policies and processes. The recent adoption of the One-in, One-out rule follows the adoption of a similar rule in Australia in 2008.

But this will require a balanced approach, according to shifting policy priorities and to political demand and circumstances. This also requires *ex post* evaluation to assess performance and learn effectively from past initiatives.

Strategies and approaches for implementation

Two different broad options are available for implementing regulatory policy. The first is a gradualist approach with marginal changes implemented year after year. The second is a “big bang” approach, with broad and sudden changes. The choice will depend on countries’ history and economic circumstances.

Some countries, such as the Nordic countries, Switzerland, or large European continental countries, have often traditions for consensus, for gradualism in policy making. The approach in many cases was to follow the motto: “Start with simplification then welfare economics,” gradually building the capacities and support among decision makers, the regulators and the stakeholders. This gradualist strategy combines well with the Nordic countries’ problem-solving approaches where consensus-based governance are preferred to centralised, powerful and challenging oversight bodies. For example, the implementation of Norway’s regulatory policies seems to follow the same path for implementation as the one chosen for E-Government, where a large number of ministries and agencies started discussing and agreeing on principles and standards until a self-enforced practice emerged.

Advocates of gradualist and incremental approaches have argued that sequencing reforms and guiding support through expansion of coverage is a better and more feasible political option than radical change which can be superficial. The key is to see approach reform through continuing processes. This could also correspond to Australia’s experience, with a pragmatic approach of continuous regulatory improvements, such as reflected through the progressive strengthening of requirements for RIA over time (OECD, 2010a).

This gradual approach also assumes that spill-over effects exist between the core functions, or from one tool to another (e.g., from SCM to RIA). For instance, Germany’s *NRCC* considers that applying SCM has had broader positive effects on other aspects of the administrative processes. The publication of the SCM baseline measurements and their consultation with the public has significantly strengthened transparency. The use of the SCM rationale has helped to disseminate new evidence-based approaches among civil servants. As a result, federal ministries are now better equipped in formulating more robust proposals either of regulatory or other policy instruments. Strategically, the federal government has developed new capacities to formulate quantitative goals, determine the degree to which they have been reached, and portray them in an understandable form (OECD, 2010e).

A gradual approach based on trial and error contributes to credibility and acceptance of an oversight body, which then helps to root regulatory policy in the institutional setting. Often, during the first few years the relationship between the oversight body and the regulators can be strained, and sometimes adversarial. The reduction of their regulatory discretion can be resented by regulators. So successful oversight bodies have been patient and have persevered to make their case, until their input was fully recognised by the final decision makers. Credibility takes time to appear and relationships are also evolving, until a more harmonious situation emerges.

However, this may not be suited to all countries. Some have used the opportunities from past crises to implement broad changes. The experience of Korea and Mexico shows how such windows of opportunities were used. A crisis offers broader possibilities for change, re-inventing governance and rule-making mechanisms from the top, to establish new institutions and reform the existing ones.

Furthermore, strategies focusing solely on “quick wins” may also have their drawbacks. As a result, institutions may give an excessive focus to pure administrative compliance costs, while leaving aside the more complex issues of the substantive compliance cost of regulations. In some countries, policy analysts have also considered that incremental approaches were too slow and produced only limited results. There is danger that episodic and incremental efforts achieve only marginal gains and these can easily be reverted (OECD, 2010f).

Hence, the most fruitful approach tends to mix short-term results which help to build credibility with “bigger bang” initiatives that can convince and nurture a political constituency over the long term, supporting deep-seated reforms. For example, in the United States, *OIRA*’s makes constant efforts to control paperwork as a clear response to the government, businesses and citizens’ needs to reduce red tape. However, *OIRA* has also taken the time to build a successful practice in challenging RIAs from the agencies, some of them very complex and political.

Balancing the efforts between various functions for regulatory oversight is also important for success. This requires both corrective and preventive measures in order to maximise success. For example, in the UK, the *BRE* has moved simultaneously on two key fronts – simplification of existing regulations through the reduction of administrative burdens, and *ex ante* impact assessment of new regulations.

Forging a political constituency, communicating with stakeholders and the broader public

Communication is essential for success and for nurturing a political constituency. It is not enough to identify “best” policies together with the appropriate instruments, communicate them to policy makers, and then require their implementation to achieve desired policy outcomes. Often barriers to implementation emerge and political capital needs to be invested to overcome them. This investment will only be made if there is corresponding support from a political constituency, which will relay and amplify the efforts in terms of advocacy. Reforms, policies and tools are not exogenous to the national political context in which they operate. They are the result of political processes and forces, which they need to reinforce.

Setting up an oversight body already represents a signal sent by government to society and to the business community about their commitment to regulatory policy. The establishment of the *Better Regulation Council* in Sweden and the *National Regulatory Control Council (NRCC)* in Germany have in effect been welcomed by many stakeholders. For them, and in particular business stakeholders, the existence of an oversight body enhances visibility, credibility and sustainability of the policy.

The setting up of an oversight body needs to be complemented by a clear strategy focused on producing the right outcomes. Many oversight bodies can easily confuse outputs with outcomes and may mistakenly concentrate on the former. Campaigns will be built on a number of RIAs, laws and regulations eliminated, formalities reviewed, administrative burdens identified, statistics difficult to verify. Such types of communication raise expectations but may also not match public expectations. Citizens and businesses are looking for practical outcomes such as fewer risks, costs, and a friendlier regulatory environment. Failure to meet with this goal and with changing perceptions of stakeholders entails the risk of political backlash.

Many oversight bodies have in fact enhanced their communication initiatives to build a political constituency. In the United Kingdom, the *BRC* has made considerable and constant efforts in the past to explain and publicise the different elements of its the Better Regulation agenda. An impressive effort of open communication has for instance been achieved by Belgium with the Kafka brand used to promote government efforts towards reducing paperwork and eliminating regulatory inefficiencies.

Box 3. Belgium, focusing public attention with Kafka

Belgium provides an excellent example of communication focused around the need for simplification. The Kafka website reviews existing measures and provides contact points for citizens and businesses to report on issues related to administrative burdens. This effort of communication at the national level, is mirrored with considerable attention paid to communication at the subnational level.

Flanders has developed a targeted website, inviting suggestions for the public. The regional authorities are also using indicators to demonstrate progress and performance, which are used to communicate results. In Wallonia, one of the key principles for administrative simplification is “let it know”. A set of workshops, events with stakeholders has been organised, together with presentations in the regional parliament.

All these policies help to build support around the Better Regulation agenda, and contribute to strengthening the efficacy and effectiveness of the regulatory oversight bodies, whose mission is mainly organised around simplification at national level.

For more detail see OECD (2010k), *Better Regulation in Europe: Belgium*, Paris.

But effective communication is difficult to achieve. Too much information can blur the message. Furthermore, too enthusiastic communication campaigns can raise the danger of inflating expectations. Real but modest progress may be received coldly as a result.

Thus, successful oversight bodies have tended to manage expectations through time in order to nurture the political support. Perceptions of progress are an issue, and the time lag between starting the programme and achieving results becomes part of the policy debate. For example, communication issues were identified in the recent OECD assessment of Better Regulation in Sweden. “Cultural” misunderstandings about how government works and the time it takes to make changes, especially if legislation is required, need to be addressed and shared with the public and with business audiences (OECD, 2010f).

Communication initiatives also need to be adapted to a changing environment. For instance in Portugal, *SEMA* and the *Centro Juridico (CEJUR)* have meticulously controlled the strategy for communicating the Better Regulation (*Legislar Melhor*) Programme from the start. As outcomes have gradually appeared, different channels have been exploited (see Box 3).

In the Netherlands, the *RRG*’s communications strategy is based on a broad public relations’ framework as well as business sector specific communication. Business “ambassadors” are used to explain and discuss important developments, not only to the business community but also to other stakeholders and opinion formers. The communication strategy is regularly revisited and reinforced. The 2009 Communication Strategy and Public Relations Plan included activities in the local, regional and national press alongside specific communication using editorials, a monthly digital newsletter on Better Regulation and portals to access information, as well as the business ambassadors.³⁷ *ACTAL* plays a key role in terms of advocacy and communication, and is engaged across the main Better Regulation policy “fronts”. Evaluation of communication activities overall is part of the *RRG* communication strategy using a “perception monitor”. The different activities are also evaluated separately. For instance the commercial campaign is evaluated by a specialised research company.

Box 4. Channel used to communicate the regulatory policy in Portugal

- *Websites.* The SEMA website provides detailed information about the Simplex Programme and can be accessed through the government's website as well as the Citizen Portal and the Business Portal.¹ The Ministry of Justice has developed a specific website on administrative simplification, with information on simplification measures for citizens and companies within its field of competence, for example, company registration and fiscal, accounting, and statistical information, trademarks and patents.²
- *Media relations.* The launch of new services resulting from the Simplex Programme usually involves public presentations by SEMA, the Ministry of Justice or other parts of the government.
- *Documents.* SEMA and the Ministry of Justice have produced a number of documents, available online, which set out the overall objectives of the government's Better Regulation policy, in particular simplification. A recent example is a five-language booklet "Portugal simplifies" published by the Ministry of Justice, which presents 14 key measures to simplify administrative procedures

1. www.portugal.gov.pt; www.portaldocidadao.pt; www.portaldaempresa.pt

2. www.cuttingredtape.mj.pt

Source: OECD (2009b); Portugal and Ministério da Justiça (2008).

The risk is to always keep the line clear with what would be perceived as propaganda, in particular when a government or a policy champion has invested extensive political capital and the results tend to lag behind. This situation is frequent when oversight bodies are involved in the difficult task of measuring and evaluating results. The temptation is great to boost benefits rather than costs and failures to overcome scepticism.

The best strategy is often to embed transparency and accountability from the start in the definition of the policy and of the mandate. Communicating on progress with implementing the strategy is often the best. For example, in Portugal, SEMA has established mechanisms for monitoring the Simplex Programme and evaluating its results. Progress reports are published every quarter on the Internet. In addition the SEMA established a monitoring panel in 2007. Its mission is to monitor progress and bring forward suggestions for improvement. The panel has had two meetings so far and it is too early to assess its impact (OECD, 2009b).

CONCLUSION

Since the creation of the first modern oversight body more than 25 years ago in the U.S., most OECD member countries have established one or more institutions to implement, monitor and enforce their regulatory policy. Despite the fact that there is no “one size fits all solution”, several conclusions emerge from the OECD experience.

The report helps to frame the understanding of regulatory oversight bodies within a broad and coherent framework for regulatory policy, and adopts a functional approach. These bodies have been mandated to undertake a series of core functions: overseeing the rule-making process, assisting rule makers in their evidence-based *ex ante* analysis, challenging the quality of their regulatory proposals and advocating for deregulation, re-regulation and/or better regulation. Selecting the functions and endowing the oversight body with responsibilities and resources reflect core strategic choices for moving forward a regulatory reform agenda. However, it is rare to see oversight bodies cumulating all the functions simultaneously. Often, regulatory policy operates with a system of checks and balances, including networked approaches. This requires a strong core body/unit, supported by a network across regulators and ministries that facilitates the adoption of a common approach.

Governments have had to address institutional design issues to set up these bodies in the light of their constitutional, administrative and cultural context. Depending on the options chosen, the bodies have been endowed with specific “inputs” such as broad and narrow mandates, specific rules and procedures for enforcing regulatory oversight, direct access to final government decision makers, technical autonomy or human and budgetary resources to operate efficiently.

Regulatory oversight bodies are as strong as the political leadership behind them. The success of these institutions is dependent on underlying political forces and external drivers of the policy. In addition to the obvious “political will” required, some oversight bodies have performed better thanks to their efforts to co-ordinate and ensure coherence with other policies and reform institutions.

This report illustrates the strategic choices that are facing countries. For example oversight bodies need to arbitrate tradeoffs between short-term and long-term policy investments. They also need to decide on a balance between the efforts devoted to the *ex ante* assessment of regulations and the improving of the stock of existing regulations. They also have to decide between incremental gradualist approaches, and more sudden “big bang” changes, taking advantage of the windows of opportunity of a crisis.

Governments have come to fully grasp the importance of communication and nurturing a political constituency. While a champion is necessary at the start, political forces need in turn to be nurtured to ensure that policies can be sustained over time.

Of course, all countries face these challenges in different ways. Some have had time to establish and refine their systems over several decades while others are only starting. The increasingly rich experience of OECD countries forms a body of experience and knowledge, which is just being analysed and investigated. Further complementary analysis of indicators of performance, or lessons from perception surveys could also be useful to shed light on the factors of performance. While the importance of changing the administrative culture of regulators is now fully recognised, this requires a set of incentives and practical options which are just being considered. Some countries still have a relatively short track record in the field.

In the light of the diversity of the institutional settings across countries, this report could usefully offer a series of issues that governments may wish to explore when setting up or reviewing their regulatory oversight apparatus. A useful guide may be to consider a series of questions that will help to assess whether the system is designed to deliver on the goals to improve the quality of regulations:

- What is the mandate for regulatory oversight? How broad or specific? What is the scope of the mandate? What is the role of exclusions and exemptions ? Are they justified?
- How to balance the need for regulatory oversight with political discretion? How to ensure political "buy in" into regulatory policy? How could this be combined with technical autonomy in the assessment of existing and new regulations?
- What is the governance of the regulatory oversight body? To whom is it accountable? Are the resources and statute adapted to the tasks and responsibilities? Are staffing policies in line with political needs and priorities ?
- To which extent are the regulatory processes formalised? How does the system of checks and balances operate between sectoral regulators and ministries and the core oversight body?
- Are the tools and methods for regulatory oversight sufficiently clear? Is there a need for assisting sectoral regulators and ministries?
- Does the regulatory oversight body communicate its policy appropriately within government and outside government ? What are the tools and for a used?
- How is coordination organised between the oversight body and other regulators at national level ? What is the scope for coordination across levels of government? What benefits could be derived from further international regulatory cooperation ?

These questions could guide further applied comparative analysis at international level. In addition, this could help to derive more in depth analysis focused on more specific aspects and their contribution to performance. The findings of the report could also offer a potential framework for a focused review of institutional settings in a selected number of countries, envisaged in the context of country reviews. This would allow to assess the strategies deployed by the countries, and the extent to which the goals assigned to oversight bodies have been met. The issue of investing political capital and efforts into one of the core functions could be analysed in the light of its social and political benefits. These trade-offs are often a key aspect of policy making when implementing regulatory policy.

While the results of this report remain exploratory, they represent a first systematic attempt at reviewing and understanding the regulatory oversight function in a cross national setting. Given limitations in terms of information, the report explores the relationship between the institutional design of oversight bodies and their contribution to performance in terms of high quality regulation. The institutional approaches adopted by countries, whether in networks and decentralised settings, or more centralised, will need to be tested and refined, in the context of performance analysis and assessment.

NOTES

1. This included Belgium, Denmark, Finland, the Netherlands, Portugal, the United Kingdom, Sweden, Germany and France.
2. Based on OECD (2002b).
3. The purpose of the prompt letter is to suggest an issue that OMB believes is worthy of agency priority. Rather than being sent in response to the agency's submission of a draft rule for OIRA review, a "prompt" letter is sent on OIRA's initiative and contains a suggestion for how the agency could improve its regulations.
4. Subsidiary is an organising principle that indicates that matters ought to be handled by the smallest, lowest or least centralised competent authority (see OECD, 2002a).
5. See Robert A Kagan (2001), quoted in OECD (2008b).
6. The Swedish government framework is based on a dualist principle which makes a clear distinction between the small policy making core (the Government Offices, with different ministries) and a much larger set of government agencies that implement policy, including through the development of secondary rules to give effect to framework legislation developed by the Government Offices and enacted by the parliament.
7. In Sweden, the Government mainly influences policy implementation through general prescriptions to the agencies, but in some cases gives specific directions. Each agency generally has a high degree of freedom in choosing how to use their resources to achieve the results demanded by the government. But they are accountable to the Government on the delivery of results compared with objectives, which is considered a powerful incentive for agency heads to perform
8. In the U.S., the first budgetary control Act was the Anti-deficiency Act passed in 1870 to control the spending spree of the government. However, a stable and effective system did not see the light until the Budget and Accounting Act of 1921 which was passed to establish order in the legislative and the executive sections of the government. That effort was further strengthened in 1974 with the Congressional Budget Act.
9. The role of ROB in non Executive branches of the State is beyond the scope of the paper
10. Preliminary Aspects were presented at the International Regulatory Reform Conference organised jointly by The Board of Swedish Industry and Commerce for Better Regulation (NNR) the Swedish Ministry of Enterprise, Energy and Communications and the Bertelsmann Foundation in Stockholm in November 2009.
11. In some non-OECD countries, something similar exists with systemic efforts with the undertaking of regulatory guillotine. In Croatia, Republic Srpska (Bosnia), Vietnam, the units in charge of the initiative have transformed themselves into RIA units at the end of the project valuing greatly the 'in the field' exposure and training.
12. The table is based on country material gathered by the OECD Secretariat, particularly from recent reviews including Australia, Italy, Korea, and work conducted in Mexico and Greece (See note 1). The current OECD Assessment of Regulatory Capacity in 15 Member States of the EU (hereinafter referred to as the EU15 Project) was particularly used as well as the report *Implementing Regulatory Reform: Building the Case through Results* OECD (2008b).

13. Though, it is also known that “political will” is not an endogenous variable; an appealing project can create political support.
14. The establishment of the NRCC was agreed by the CDU, CSU and the SPD in the Coalition Agreement of 2005 and ratified by law in August 2006 Cfr. Act on the Establishment of the National Regulatory Control Council of 14 August 2006, at www.gesetze-im-internet.de/NRCCg/index.html (last accessed 30 April 2009).
15. The SIA and the Statutory Instruments Regulations sets out the three requirements for making regulations: (i) legal examination, (ii) registration, and (iii) publication in the Canada Gazette Part II.
16. Establishment of the Greek Presidency’s Ad hoc Group of Experts, A law on the quality of regulations is drafted (not enacted) A second law was drafted and discussed twice, accepted at the governmental committee (not enacted). The PM issued a circular on better regulation which was finally replace by the 190/2006 Act. See OECD (2010d/forthcoming).
17. Though the five Better Regulation principles developed by the Better Regulation Task Force are enacted under the Legislative and Regulatory Reform Act 2006 (regulators must have regard to the principles when exercising a regulatory function, including enforcement). The act also updates the fast-track procedures for simplifying legislation.
18. On April 1, 2007, the *Cabinet Directive on Streamlining Regulation* came into force. The Directive replaced the 1999 *Government of Canada Regulatory Policy* and introduced a lifecycle approach to regulatory management.
19. www.dpmc.gov.au/guidelines/docs/cabinet_handbook.pdf
20. By-Law on the Procedures and Principles for Preparing Legislation, 17 February 2006 and Circular Letter Regulatory Impact Analysis Activities B.02.0.Ppg.0.12-010-06-3896, 2 April 2007
21. Congress did enact the Unfunded Mandates Reform Act (UMRA, 1995), calling for nonbinding analyses of new regulations; and a provision calling for annual reports by OMB/OIRA to the Congress on the aggregate costs and benefits of federal regulation over the last decade.
22. *Gemeinsame Geschäftsordnung der Bundesministerien, GGO*.
23. This comes from the Latin expression: “*Quis custodiet ipsos custodes?*”, when the Roman writer Juvenal was asking who would oversee those assigned to guard the queen’s fidelity during the king’s absence, lest those guards betray their own duty.
24. The inter-ministerial State Secretary Group is not considered an oversight body because his remit goes beyond regulatory affairs.
25. OECD (2010c), Case Studies on Korea and Mexico.
26. The title of the report is “The business sector and regulation”.
27. With the exception of sectoral regulators.
28. See the OIRA website at www.omb.gov, and GAO www.gao.gov supra.
29. The first of these reports was delivered in April 2009 and covered the following:
 - advice concerning the nature and level of regulation that has been introduced by each portfolio since December 2007;
 - an analysis of the trends and directions in approaches to better regulation processes and outcomes, including Departmental performance in meeting the one-in one-out principle;
 - an analysis of the extent to which consultation across government has occurred on new regulation; and,
 - a review of recent developments to improve the quality and quantity of the stock of regulation.

30. Under the U.S. Paperwork Reduction Act.
31. For the last four years it has made an annual report on the quality and effectiveness of impact assessments. The NAO also reports to Parliament annually on the achievements of the Administrative Burdens Reductions Programme www.nao.org.uk/ria/ria_our_work.htm.
32. Circular A-4 of September 17, 2003 and the EU Impact Assessment Guidelines of 15 January 2009.
33. The government has given considerable discretion to BRC to determine how it will conduct its targeting in practice, asking only that in due time detailed guidelines will be established.
34. See http://ec.europa.eu/enterprise/enterprise_policy/inter_rel/tec/index_en.htm.
35. IADB (2005), *The Politics of Policy*. The last sentence is based on Dani Rodrick aphorism “it is not trade liberalisation per se, but *credible* trade liberalisation that is the source of efficiency benefits”. Rodrick (1989) in IADB (2005).
36. The current Office of Best Regulation (OBPR) predecessors – the Business Regulations Review Unit (BRRU) from 1985 to 1989 and the Office of Regulation Reform (ORR) (1989 to 2006) were hosted by the Productivity Commission.
37. www.rr.nl and www.antwoordvoorbedrijven.nl

BIBLIOGRAPHY

Note: This bibliography presents the background information used in the context of the preparation of the study. In addition, a specific questionnaire was submitted by Japan to provide up-to-date information on the country.

Allio, Lorenzo (2007), “The European Commission’s Impact Assessment Board: Initial Developments”, European Risk Forum Background Note 02, p. 5.

Banks, Gary (2007), *Great Expectations: Management (and other), Lessons from the Regulation Taskforce*, Productivity Commission.

Danish Commerce and Companies Agency (2003), International Study, “Efforts to Reduce Administrative Burdens and Improve Business Regulation.”

Government Accountability Office (2009) Report to the Chairman, Committee on Oversight and Government Reform, House of Representatives, Improvements Needed to Monitoring and Evaluation of Rules Development as Well as to the Transparency of OMB Regulatory Reviews. Washington, DC, www.gao.gov.

Goasguen, Claude and Jean Mallot (MM.) (2009), information report on “Les critères de contrôle des études d’impact accompagnant les projets de loi”, Comité d’évaluation et de Contrôle des Politiques Publiques, Assemblée Nationale.

Inter-American Development Bank (2005) *The Politics of Policy*. Inter American Development Bank Washington, DC

Kagan, A. Robert (2001), *Adversarial Legalism: The American Way of Law*, Cambridge, Mass, Harvard University Press.

Malone, Antoine (2009), *Réglementer moins, réglementer mieux ? Les analyses d’impact de la réglementation*, Centre d’Analyse Stratégique, Note de Veille No. 151, September.

National Audit Office (2008), Briefing for Regulatory Reform Select Committee, London, www.nao.org.uk.

National Audit Office (2006), “Evaluation of Regulatory Impact Assessments 2005-06”, www.nao.org.uk.

OECD (1999), *OECD Reviews of Regulatory Reform: Regulatory Reform in Mexico*, OECD Publishing, Paris.

OECD (2000), *OECD Reviews of Regulatory Reform: Regulatory Reform in Korea*, OECD Publishing, Paris.

OECD (2002a), *Distributed Public Governance: Agencies, Authorities and other Government Bodies*, OECD Publishing, Paris.

- OECD (2002b), *Regulatory Policies in OECD Countries: From Interventionism to Regulatory Governance*, OECD Publishing, Paris.
- OECD (2004), *OECD Reviews of Regulatory Reform: Mexico: Progress in Implementing Regulatory Reform*, OECD Publishing, Paris.
- OECD (2003), *From Red Tape to Smart Tape: Administrative Simplification in OECD Countries*, OECD Publishing, Paris.
- OECD (2005), “Designing Independent and Accountable Regulatory Authorities for High Quality Regulation”, Proceedings of an Expert Meeting in London, United Kingdom.
- OECD (2006), *Reviews of Regulatory Reform, Switzerland, Seizing the Opportunities for Growth*, OECD Publishing, Paris.
- OECD (2007a), *Cutting Red Tape: Administrative Simplification in the Netherlands*, OECD Publishing, Paris.
- OECD (2007b), *OECD Reviews of Regulatory Reform: Korea: Progress in Implementing Regulatory Reform*, OECD Publishing, Paris.
- OECD (2007c), *OECD Reviews of Regulatory Reform, Sweden, Achieving Results for Sustained Growth*,
- OECD (2008a), *Implementing Regulatory Reform: Building the Case through Results*, Chapter 3: “The Role of Advocacy Bodies – Building Drivers and Engines for Reform: Integrating Business and Citizens in the Regulatory Quality Process”, OECD, Paris.
- OECD (2008a), “Issues in the Comparison of Regulatory Oversight Bodies”, paper prepared by Jonathan Wiener for the OECD in October 2008., Paris.
- OECD (2009a), *Better Regulation in Denmark*, Paris.
- OECD (2009b), *Better Regulation in Portugal*, Paris.
- OECD (2009c), *Better Regulation in the United Kingdom*, Paris.
- OECD (2009d), “Multi-Level Regulatory Governance: Policies, Institutions and Tools for Regulatory Quality and Policy Coherence”, *OECD Working Papers on Public Governance*, Rodrigo, D., L. Allio and P. Andres-Amo, No. 13, DOI:10.1787/224074617147.
- OECD (2010a), *OECD Reviews of Regulatory Reform: Australia: Towards a Seamless Economy*, OECD Publishing, Paris.
- OECD (2010b), *Regulatory Reform for Recovery: Lessons from Implementation during Crises*, Case Studies 2 and 3 on Korea and Mexico, Vol. 2, Paris.
- OECD (2010c), *OECD Reviews of Regulatory Reform, Italy, Better Regulation to Strengthen Market Dynamics*. Paris.
- OECD (2010d/forthcoming), Public Management Reviews, “Strengthening Public Administration Reform in Greece: Improving Regulation”, *Working Paper H3* prepared by Audrey O’Byrne, Paris, forthcoming.

OECD (2010e), *Better Regulation in Europe, Germany*, Paris.

OECD (2010f), *Better Regulation in Europe, Sweden*, Paris.

OECD (2010g), *Better Regulation in Europe, France*, Paris.

OECD (2010h), *Better Regulation in Europe, Netherlands*, Paris.

OECD (2010i), *Better Regulation in Europe, Spain*, Paris.

OECD (2010j), *Better Regulation in Europe, Finland*, Paris.

OECD (2010k), *Better Regulation in Europe, Belgium*, Paris.

Wiener, Jonathan B. and Alberto Alemanno (2010), “Comparing Regulatory Oversight Bodies across the Atlantic: The Office of Information and Regulatory Affairs in the U.S. and the Impact Assessment Board in the EU”, *Duke Law Working Papers*, No. 16, available at http://scholarship.law.duke.edu/working_papers/16

World Bank/IFC (2008), *Regulatory Transformation in Mexico, 1988—2000: Case Studies on Reform Implementation*, Washington, DC, available at: [www.ifc.org/ifcext/fias.nsf/AttachmentsByTitle/FIAS_Casestudies_MexicocaseDec08/\\$FILE/mexicocase.pdf](http://www.ifc.org/ifcext/fias.nsf/AttachmentsByTitle/FIAS_Casestudies_MexicocaseDec08/$FILE/mexicocase.pdf)

ANNEX

Table 5. Table A.1. Regulatory oversight bodies in selected OECD member countries, functions and responsibilities

	Name	Functions				Functions and responsibilities	Veto right (<i>ex ante</i>)
		Co-ord	Advic	Chall.	Advoc		
AUS	Deregulation Group (comprising the Deregulation Policy Division and the Office of Best Practice Regulation) in the Department of Finance and Deregulation	X	x	x	x	Deregulation Group provides policy advice on ways to reduce the costs of regulation, provides secretariat and policy support to the Council of Australian Governments' Business Regulation and Competition Working Group, and assists government agencies and departments to comply with the Government's Regulation Impact Analysis requirements.	Proposals should not proceed to the decision-makers without OBPR certification – the Prime Minister can exempt proposals from this requirement.
AUS	Deregulation Policy Division (<i>EX POST</i>)	X	x		x	Ensure attention to the stock of existing regulation and streamlining regulatory burdens Encourage right use of regulation and reduction of unnecessary regulation	More peer pressure and advocacy.
BEL	Administrative Simplification Agency (ASA)	X	x		X	Making proposals for simplification, stimulating and coordinating initiatives, developing a methodology for measuring administrative costs, and organising policy dialogue on simplification matters.	More advocacy and coordination.

	Name	Functions				Functions and responsibilities	Veto right (ex ante)
		Co-ord	Advic	Chall.	Advoc		
CAN	Regulatory Affairs Sector (TBC-RAS)	x	x	x		Reviews RIAs prior to pre-publication and publication. Challenges departments and agencies on the quality of RIA. Provides advice and support to departments agencies during the development of regulatory proposals. Supports government priorities through continuous improvement of the federal regulatory policy. Advises Treasury Board Ministers on Governor in Council (GIC) submissions. Through the Centre of Regulatory Expertise (CORE), assists departments in building internal capacity to comply with the Cabinet Directive on Streamlining Regulation particularly in the areas of cost-benefit analysis, risk assessment, co-ordination and co-operation and performance measurement and evaluation. Brokers the resolution of regulatory issues through interdepartmental co-ordination and horizontal policy management.	The TBAS can review, comment and delay the proposals but has no veto right. Can advise the treasury board not to recommend a regulation for approval by the Governor in Council. The treasury board can exert the veto power (rarely happens).
DK	Simplification & Better Regulation Unit	x	x	x		Ensuring high quality of new regulation. Develop Government regulatory policies, and co-ordinate the preparation and examination of the government's annual low planning programme. Reviewing/screening all regulation. Measurement of the administrative burdens and assist other ministries in performing Business Impact Analysis as part of their RIA-process. The division conducts IAs of the administrative burdens on business of draft regulations. The division assists other ministries in performing Business Impact Analysis as a part of their RIA process. Reports on progress to Prime Minister every six months, the prime minister can put pressure on Ministries.	The Ministry of Finance has the right (and power) to dialogue with the responsible ministry. If no result, possibility of blocking the proposal from going to Cabinet. The Ministry of Finance vets only the part of the analysis of economic consequences on government.
DK	Better Business Reg. Div. of Danish Comm. and Companies Agency		x			The division conducts IAs of the administrative burdens on business of draft regulations. The division assists other ministries in performing Business Impact Analysis as a part of their RIA process. Reviewing/screening all regulation (primary and secondary) based on a preliminary assessment of their impact on businesses.	The division can propose more detailed, in-depth, measurement of draft
EU	General Secretariat/Impact Assessment Board (IAB)	x		x		To be completed.	To be completed.
GER	Better Regulation Unit	x		x		Co-ordination and monitoring the implementation of the "Bureaucracy Reduction and Better Regulation" programme. Supporting line ministries on their burden reduction plans. Co-operating with Federal Statistical Office and NRCC on technical aspects of the SCM methodology. Supporting the State Minister in charge of Federal-Land co-ordination.	The Federal Ministry of Interior checks the relevancy of RIAs, although it has no power to block proposals with inadequate evaluation.

	Name	Functions				Functions and responsibilities	Veto right (ex ante)
		Co-ord	Advic	Chall.	Advoc		
GER	National Regulatory Control Council	x	x	x		Providing assistance with the examination and measurement of administrative burdens of new regulations on business Supporting the development of the Standard Cost Model (SCM) methodology Advising the committees of Parliament (Bundestag) on request. Reports on the admin burden measurement programme.	NRCC provides a statement on the expected administrative costs for business (using the SCM) for all draft bills sent to Parliament. For drafts tabled as an "urgent political matter", the NRCC's evaluation is not requested.
IT	Regulatory Impact Analysis Unit at DAGL (Legislative Office)			x			
IT	Unit for Simplification and Better Regulation (USQR)	x	x	x			
IT	Administrative Simplification Office (UANAS)				x		
JP	Subcommittee for Regulation and System Reform (of Government Revitalisation Unit)				x	Examining regulations and reporting proposals for better regulation.	
JP	Administrative Evaluation Bureau	x	x			Co-ordinating and overseeing the implementation of RIA. Promote regulatory reform, having a close co-operation with the Council of the Promotion of Regulatory Reform and understanding the discussion of them and getting their reports.	
KOR	Regulatory Reform Committee (RRC)	x			x	Reviewing new and amended regulations. Setting the direction of regulatory reform. Obtaining and responding to public opinion on regulatory reform. Monitoring and evaluation of ministries' regulatory reform. Promulgates a plan for agencies to improve their existing regulations. Agencies need to report results to the RRC.	The RRC may recommend to the head of the relevant administrative agency the withdrawal or improvement of the regulations, based on a review. The head of the relevant administrative agency shall follow the recommendation and shall submit the result to the RRC.

	Name	Functions				Functions and responsibilities	Veto right (ex ante)
		Co-ord	Advic	Chall.	Advoc		
KOR	Regulatory Reform Bureau	x	x	x		The regulatory reform bureau reviews new, amended and existing regulations, implements regulatory reform tasks, monitoring and evaluating ministries' regulatory reform. The bureau is in charge of RIA, registration of regulations, training, regulatory reform satisfaction survey, regulatory information system, administrative investigation and deals with regulatory proposals. It sets the basic direction of regulatory policy as well as research and development of regulatory institutions.	
MX	Regulatory Improvement Commission (COFEMER)	x	x	x		Reviews regulatory impacts, provides advice and support to ministries, maintains the federal registry of formalities.	The COFEMER can return regulations if they do not comply with the RIA requirements.
NLS	Administrative Board for Administrative Burdens (ACTAL)		x		x	Government's communicator of Better Regulation strategy. Independent research/studies/surveys on administrative burdens. Providing advice to local authorities on regulatory pressure. Encouraging the Netherlands Court of Audit to carry out audits of the evaluation process. (The Netherlands Court of Audit – NCA provides <i>ex post</i> scrutiny of Governments actions). Organizing workshops and trainings for civil servants. Delivering strategic opinions and strategic theme-based opinions (e.g. ICT case studies) ACTAL reviews all proposed legislation that will have an impact on the overall administrative burden on Dutch businesses and/or citizens (they must be submitted).Issues and advisory opinion.	ACTAL just checks the calculations. The ACTAL's report can be divided into four categories: an approval of the proposal with no other comments, an approval with conditions, rejection with conditions, full rejection. ACTAL just gives advice and has no veto right and ACTAL's advice is not binding.
NL	Regulatory Reform Group	x	x	x		Inter-ministerial co-ordination and monitoring of the business burden reduction programme (e.g. excess to databases) Co-ordination of EU policy regarding administrative burden reduction for business Providing education and training for civil servants. Communicating with stakeholders (Communication Plan, direct interviews, consultations, publishing results of burden reduction programme, etc.) Monitoring, Advising to relevant ministries, Collection information on progress of each ministry.	NA. To be completed.
POR	Secretary of State for Admin. Modernisation (SEMA)		X		x	Responsibility for co-ordinating and supervising initiatives for administrative modernisation and burden reduction. Providing guidance to ministries on administrative burden reduction as well as the SCM methodology (and with technical support from Agency for administrative modernisation, its supporting unit).	Has no veto right or decision power.

	Name	Functions				Functions and responsibilities	Veto right (ex ante)
		Co-ord	Advic	Chall.	Advoc		
POR	Secretary of State for the Presidency of the Council of Ministers/Centro Jurídico (CEJUR)	x	x			The Secretary of State co-ordinates of the law-making process. Mediator of the disputes among ministries Co-ordinator of the Better Law Making Programme (Legislator Melhor Programme). Reviews the proposals for the meeting of the Council of Ministers. Circulates and collects of all proposals for laws and the most important secondary regulations (ministerial level). CEJUR is a purely legal centre responsible for overseeing the implementation of BR policies, working under the Secretary of State. CEJUR provides analysis on the conformity of the proposal with respect to the constitution, EU law and other higher regulation. Develops guidance for law drafters with common rules for the preparation of regulation. CEJUR co-ordinates SCAN (System for Control of Normative Acts), which monitors deadlines with respect to transition of directives and adoption of secondary regulation. CEJUR oversees the so-called the Simplex Test, an adaptation of the SCM) within the impact assessment.	The Simplex Test I required for all draft regulations (primary and secondary) with an exception.
POR	Regulatory Reform Unit		x	x		The unit carries out the RIA trainings. Co-ordinator of administrative burden reduction plan. No clear powers.	NA
SWE	Better Regulation Council		x		x	The Better Regulation Council' assists 'rule makers' (at ministries or government agencies) in their work to simplify regulations for enterprises. It assesses the general quality of impact assessments, tracks the overall Better Regulation agenda and provide advice and support for a cost conscious and effective regulatory framework, and to the extent possible, assist committees of inquiry in their work. The Council scrutinises proposals for new or amended regulations from both ministries and government agencies that could affect the working conditions, competitiveness or other issues relevant to businesses. Draft legal/regulatory proposals/final reports from committees of inquiry and impact assessments must be submitted to the Better Regulation Council for an opinion. The Better Regulation Council follows developments in the area of simpler regulation and provides information and advice that promotes cost-conscious and effective regulation. As part of its work, the Better Regulation Council is expected to maintain continuous contacts with business organisations.	The Better Regulation Council scrutinises proposals prepared by both ministries and government agencies as well regulatory proposals from committees of inquiry (the majority of its work has so far been on proposals of government agencies and committees of inquiry). It may criticise, in its opinions, drafts if they are not good enough, but it can not send the proposals back.
SWE	The Swedish Agency for Economic and Regional Growth (Tillväxtverket)	x	x		x	The Swedish Agency for Economic and Regional Growth (Tillväxtverket) replacing NUTEK works pro-actively for sustainable growth across the country by facilitating business". It is to stimulates enterprises, growing enterprises and sustainable and competitive business and industry. The agency also manage programmes funded through the EU's Regional Development Fund (ERDF). The agency has a division dedicated to Better Regulation, which supports and develops impact assessment methodologies and the measurement (baseline and update measurement) of administrative burdens.	NUTER has no right to return or stop a proposal if the IA is inadequate.

	Name	Functions				Functions and responsibilities	Veto right (ex ante)
		Co-ord	Advic	Chall.	Advoc		
SWE	The Better Regulation team, Division for Entrepreneurship, Ministry of Enterprise, Energy and Com.	x	x	x		The unit is the main co-ordinator for Better Regulation and the closest to an "overall co-ordinating unit". It currently has 8-9 staff. The Better Regulation team co-ordinates, supports and monitors cross-government work on better regulation, simplification of regulation and reduction of administrative costs, etc. It also carries out a sort of quality control of proposals concerning business aspects during the joint draft procedure within the Government Offices.	The unit can stop legal proposals during the joint draft procedure within the Government Offices (in the same way as other concerned divisions at different ministries within the Government Offices need to give their approval to the proposal during the joint draft procedure). If a proposal affecting businesses is not accompanied by an impact assessment, the unit can refuse to accept it during the joint drafting procedure. The same goes if the impacts on businesses are poorly analysed or if the proposals contain unnecessary burdensome regulations or could be simplified in any other way.
UK	Better Regulation Executive	x	x	x		Better Regulation executive (a main driver and co-ordinator) Advocacy body. Think tank. Support, advice and guidance for departments (including trainings for civil servants) Communicating the Better Regulation agenda and strategy (website, media, consultations, reports). Ad hoc public consultations (with business organisations, academics, trade unions). Joint review activities with the National Audit Office. EU relations. BRE provides support for departments in the development and adjustment of their Simplification plans. Administrative burden reduction (cutting bureaucracy for public services) Providing supporting tools (web-based administrative burden calculator, administrative burden database, administrative burden spreadsheet) Training (on-line Standard Cost Model training) and Guidance (SCM manual, Simplification Guidance, etc.) Publishing administrative burden reduction and simplification summaries.	BRE does not dispose of any formal powers to call departments to account. The power of BRE is via assessments of departments' performance. BRE oversees and frames the process of developing IAs. BRE can propose a scrutiny of IA by the Panel for Regulatory Accountability if it considers that the analysis is inadequate. Panel for Regulatory Accountability can vet costly or controversial proposals for new regulations as well as departmental simplification plans.
UK	Reducing Regulation Committee			X		The Reducing Regulation committee (RRC) is a Cabinet sub-Committee which takes strategic oversight of the delivery of the government's regulatory framework, scrutinising, challenging and approving all new regulatory proposals and ensuring that new regulation complies with the One-in, One-out system of regulatory control.	Yes, the RRC has the power to veto regulatory proposals.
UK	Regulatory Policy Committee		X		x	The independent regulatory policy committee scrutinises the impact assessments through providing advice to the government. The RPC focuses on the options considered for implementation and the robustness and quality of the analysis.	No, role is advisory, but its opinion is public and attached to regulatory proposals.

	Name	Functions				Functions and responsibilities	Veto right (<i>ex ante</i>)
		Co-ord	Advic	Chall.	Advoc		
USA	Office of Information and Regulatory Affairs (OIRA)	x	x	x	x	<p>OIRA reviews draft regulations, monitors RIAs conducted by agencies and departments, and oversees the implementation of government-wide policies in the areas of information technology, information policy, privacy, and statistical policy. OIRA consults during the process of developing a new regulation. OIRA supervises the agencies that have been charged by Congress to regulate. OIRA also oversees agency implementation of the Information Quality Law.</p> <p>OIRA completes about 500 - 700 regulatory reviews each year. OIRA has had only an occasional interest in reviewing of existing regulations, e. g. "look-back" initiative. OIRA sends "Prompt letters" with suggestion for ho the agency could streamline and improve its regulation in areas where a current regulation is no longer needed and should be modified or rescinded.</p>	OIRA has the power to issue "Return letters" –to return regulations that fail to meet Executive Order principles and requirements or for which the IA is inadequate. Disputes over a return letter could be appealed to a cabinet-level committee chaired by the Vice President.

Source: Secretariat, based on an inventory from Desk-based research, EU 15 reports and other relevant information.

Table A.2. Regulatory oversight bodies in selected OECD member countries, governance and statutes

	Name	Unit	Legal or administrative basis for the body	Head of Unit	Staffing and Capacity	Accountability to the political level
AUS	Deregulation Group (comprising the Deregulation Policy Division and the Office of Best Practice Regulation) in the Department of Finance and Deregulation	Unit	Financial Management and Accountability Act Determination 2008/03 – Section 32 (Transfer of functions from the Productivity Commission to Finance)	Individual appointed by the Minister for Finance and Deregulation.	A staff of approximately 50 for the Deregulation group.	OBPR is “technically independent” (Ministerial Statement: Best Practice Regulation Requirement (Tanner, 2008a).
BEL	Administrative Simplification Agency (ASA)	Agency	<i>Created by Royal Order, 23 December 1998.</i>	Director appointed by the Prime Minister	Around 16 employees.	A public private steering committee drives ASA's work, provides advice and opinions. Serves as a platform for discussion between the government and stakeholders. Formally chaired by the PM, in practice by the Minister for Entrepreneurship and Administrative Simplification
CAN	Regulatory Affairs Sector (TBC-RAS)	Unit	<i>Statutory Instruments Act gives the authority to the Clerk of the Privy Council and the Department of justice to examine regulatory proposals to ensure that the drafting quality conforms to standards</i>	Merit based (public servant), the head of the RAS briefs part B of the Treasury Board Cabinet Committee. <i>Process of nomination to be confirmed.</i>	30 employees	Accountable to the Cabinet.

	Name	Unit	Legal or administrative basis for the body	Head of Unit	Staffing and Capacity	Accountability to the political level
DK	Simplification & Better Regulation Unit	Unit	missing	missing	7 employees	Ministry of Economy and Business Affairs
DK	Better Business Reg. Div. of Danish Comm. and Companies Agency	Agency	missing	Head of Agency nominated by the Minister of Economy and Business Affairs	28 employees	Ministry of Economy and Business Affairs
EU	General Secretariat/Impact Assessment Board (IAB)	Unit	Missing	Head of the Impact Assessment Board is the Secretary General of the Commission. Board includes representatives from several DGs	Missing	Reports to the Executive of the Commission.
GER	Better Regulation Unit	Unit	Cabinet Decision of 25 April 2006		12 officials, seconded from ministries	Unit is politically supported in its work by the Committee of State Secretaries on the reduction of Bureaucracy
GER	National Regulatory Control Council	Council	Act on Establishment of the National Regulatory Control Council of 14 August 2006	Board of 8 members with no remuneration with a five years mandate; appointed by the federal President upon proposal the Chancellor	NRCC is assisted by a Secretariat with 7 officials	Autonomous
IT	Regulatory Impact Analysis Unit at DAGL (Legislative Office)	Unit				

	Name	Unit	Legal or administrative basis for the body	Head of Unit	Staffing and Capacity	Accountability to the political level
IT	Unit for Simplification and Better Regulation (USQR)	Unit				
IT	Administrative Simplification Office (UANAS)	Unit				
JP	Subcommittee for Regulation and System Reform (of Government Revitalisation Unit)	Council	<i>Government Revitalisation Unit Approval</i>	Vice Minister for Regulatory Reform	17 members: President, 2 Deputy Presidents, 14 members – 3 working groups. 12 members for each group (partly concurrent with the Council). Secretariat: 35 employees).	Accountable to the Cabinet through the vice Minister.
JP	Administrative Evaluation Bureau	Unit	Act for Establishment of the Ministry of Internal Affairs and Communications	Director-General of the Administrative Evaluation Bureau	10 employees	Minister for Internal Affairs and Communications
KOR	Regulatory Reform Committee (RRC)	Council	Basic Act on Administrative Regulations	The Prime Minister is co-chairing with a Chairperson of the RRC from private sector subject to the political appointment by the President.	25 members – 18 from private sector and 7 from public sector	The RRC is responsible to the President. Direct accountability. Members not subject to dismissal, except for criminal sentences or illness.
KOR	Regulatory Reform Bureau	Unit	Basic Act on Administrative Regulations	The Deputy Minister of the Regulatory Reform Bureau chosen by the Prime Minister.	44 employees	Direct accountability to prime minister and president.

	Name	Unit	Legal or administrative basis for the body	Head of Unit	Staffing and Capacity	Accountability to the political level
MX	Regulatory Improvement Commission (COFEMER)	Agency		Head of COFEMER appointed by the President.		Accountable to the Minister of Economy, Vice Ministry for Economic Competitiveness.
NL	Administrative Board for Administrative Burdens (ACTAL)	Agency	Advisory Board Act (2000), Decree amendment no. 259/2008	3 Members of the Board. Private citizens with experience/knowledge in the field of administrative burdens.	Total number of 13 employee of a secretariat and 3 members of the Board. The Secretariat include civil servants and people with a private sector background.	Independent Advisory Body. Written advice to Cabinet.
NL	Regulatory Reform Group	Unit	Established 2006. Admin basis to be confirmed.	Nominated by the Minister of Finance	40 employees, seconded from Ministries of Finance and Economic Affairs	Direct Political Accountability to the Minister of Finance.
NL	Ministerial Unit for Programme of Admin Burdens on citizens	Unit	Established 2006. Admin basis to be confirmed.	Nominated by the Minister of Finance.	18 employees	Direct Political Accountability to the Minister of Interior
POR	Secretary of State for Admin. Modernisation (SEMA)	Unit	Decree Law 240/2007 (+ Decree Law 2002/2006 for AMA)	Appointed by the Prime Minister	Total number of 10 employees	Directly to the Prime Minister and regularly to the council of Ministers on implementation of simplex. SEMA's reports publicly accessible.
POR	Centro Juridico (CEJUR)	Agency	Private association, est. 1993		Total number of 40 employees (12 lawyers, 12 working on the Digesto – the on-line legal database)	A private association of public service under responsibility of Secretary of State.
POR	Regulatory Reform Unit	Unit	Ministerial unit		8 employees (civil servants)	Ministry of Economy

	Name	Unit	Legal or administrative basis for the body	Head of Unit	Staffing and Capacity	Accountability to the political level
SWE	The Swedish Agency for Economic and Regional Growth (Tillväxtverket)	Agency	The Ordinance (2009:145),	Director General of the Agency appointed by the Government	12 officials, with an academic background in law, business administration, economics and public affairs	To the Ministry of Enterprise, Energy and Communications.
SWE	The Better Regulation team, Division for Entrepreneurship, Ministry of Enterprise, Energy and Com.	"Unit"	A unit within the Ministry	Deputy Director General	8-9 officials with an academic background in law, business administration, economics and public affairs	To the Minister for Enterprise
SWE	The Better Regulation Council	Council	Terms of Reference for the Better Regulation Council (Sw. Regelrådet - ett råd för granskning av nya och ändrade regler som påverkar företagens regelbörda, Dir. 2008:57 & Tilläggsdirektiv till Regelrådet, Dir. 2008:142).	Chair of the Better Regulation Council	The Better Regulation Council is made up of four members (including the Chair and vice chair) with special experience of the impact of regulations on businesses., with four alternate members. The Council is assisted by a secretariat of 8 officials and with its Head.	Independent, but reports to the government as a whole with annual reports.

	Name	Unit	Legal or administrative basis for the body	Head of Unit	Staffing and Capacity	Accountability to the political level
UK	Better Regulation Executive	Unit	Legislative and Regulatory Reform Act (2006), Regulatory Reform Act (2001)	A chief executive is a "regular" civil servant	79 employees as pf Oct 2010, seconded civil servants (typically for 2 years) or business people and professionals seconded from the private sector. This includes the team for the Secretariat of the RPC (9 staffs), below.	Ministerial body, with a semi detached status via its management structure.
UK	Reducing Regulation Committee	Council (Cabinet)		The Chair is the Secretary of State for Business Industry and Skills	The Reducing Regulation Committee comprises 8 Ministers. It does not have a specific Secretariat.	Accountable to Parliament.
UK	Regulatory Policy Committee	Council	Terms of Reference defined by the Government	A chair with 6 part time members	A secretariat of 9 professional staffs under a director.	Independent Body accountable to government and Parliament as a whole
USA	Office of Information and Regulatory Affairs (OIRA)	Unit	The Paperwork Reduction Act of 1980 Presidential Executive Order 12866 (predecessor EO 12291) EO 13422 (covering the "guidance documents"). Agency with own budget.	The Administrator ("the head") of OIRA is appointed by the President subject to confirmation by the Senate.	50 employees (equivalent of 50 full-time positions) Mostly career public servants, with background in economics, policy analysis, statistics, IT, public health care, toxicology, epidemiology, engineering and other technical field	Reports to OMB Director

Source: OECD Secretariat, based on an inventory from Desk-based research, EU 15 reports and other relevant information.

Table A.3. Regulatory oversight bodies in selected OECD member countries, co-ordination mechanisms

	Name	Unit	Reporting	Co-ordination arrangements with line Ministries/ public sector bodies	General obligations resulting from oversight arrangements with ministries
AUS AUS	Deregulation Group (comprising the Deregulation Policy Division and the Office of Best Practice Regulation) in the Department of Finance and Deregulation	Unit	Finance	Each department and regulatory agency has designated a Best Regulation Co-ordinator, who is nominated by his/her department/agency. The OBPR meets regularly with this network of co-ordinators to provide information on regulatory best practice and obtain feedback. The co-ordinator is two-way communication channel among the OBPR and departments and agencies. The co-ordinators are not involved in preparing RIAs at their departments/agencies. Better Regulation Ministerial Partnerships between the Minister for Finance and Deregulation and other Ministers to pursue regulatory reform initiatives.	Departments and agencies are required to publish an Annual Regulatory Plan
BEL	Administrative Simplification Agency (ASA)	Agency	Prime Minister, Public Private Steering Group	Shared initiatives, between ministries, and across levels of government are a core feature of regulatory governance. The measurement has helped to monitor sectoral progress with burden reduction. Networking is an essential part of ASA's work.	No specific obligation.
CAN	Regulatory Affairs Sector (TBC-RAS)	Unit	Finance	Since 2007, regulatory co-ordinators have been established in every federal Ministry and agency to liaise with the Regulatory Affairs Sector.	
DK	Simplification & Better Regulation Unit	Unit	Finance	Each ministry has to periodically report to the Prime Minister on implementation of Better Regulation agenda. There is a network of inter-ministerial committees and steering groups for Better Regulation agenda.	Network of 12 co-ordinators of Better Regulation in 6 ministries

	Name	Unit	Reporting	Co-ordination arrangements with line Ministries/ public sector bodies	General obligations resulting from oversight arrangements with ministries
DK	Better Business Reg. Div. of Danish Comm. and Companies Agency	Agency	Economy	The DCCA reports twice a year to the Co-ordination Committee chaired by the Prime Minister, and once a year to the parliament, on the progress with the simplification programme, including ICT and initiatives at the EU level. The DCCA has no capacity of direct action on the ministries. Every six months, the DCCA provides reports on progress with reaching the targets for admin burden reduction through the Ministry of Economic and Business Affairs	
EU	General Secretariat/Impact Assessment Board (IAB)	Unit	COG		
GER	Better Regulation Unit	Unit			
GER	National Regulatory Control Council	Council	Interior	Tailored RIA guidelines for each ministry. Joint Rules of Procedures requires ministries to submit their drafts bills. 25% burden reduction target. SCM network of contact points. Each ministry has staff designated for burden reduction programme.	The NRCC has a right of final check of the proposal before it is going to Cabinet, according to the Joint Rules of Procedure. The ministries check each others' work for compliance with the formal provision on RIA and the quality of the analysis.
IT	Regulatory Impact Analysis Unit at DAGL (Legislative Office)	Unit	COG		
IT	Unit for Simplification and Better Regulation (USQR)	Unit	COG		
IT	Administrative Simplification Office (UANAS)	Unit	COG		

	Name	Unit	Reporting	Co-ordination arrangements with line Ministries/ public sector bodies	General obligations resulting from oversight arrangements with ministries
JP	Subcommittee for Regulation and System Reform (of Government Revitalisation Unit)	Council	COG, Cabinet Office		
JP	Administrative Evaluation Bureau	Unit	Interior	Co-ordinating and overseeing the implementation of RIA, Promote regulatory reform, having a close co-operation with the Regulatory Reform Subcommittee and understanding their discussions and reports.	
KOR	Regulatory Reform Committee (RRC)	Council	COG	RRC communicates with line ministries through the Regulatory Reform Bureau in Prime Minister's Office.	Each ministry has a division for Regulatory Reform and Legal Affairs. It has to request a review on new or reinforced regulations and report the process of its regulatory reform activities to RRC.
KOR	Regulatory Reform Bureau	Unit	COG	The Regulatory Reform Bureau in Prime Minister's office reviews new or reinforced regulations of ministries as a secretariat of RRC. Regulatory Reform Bureau communicates with line ministries through Regulatory Reform and Legal Affairs Division in ministries.	Each ministry requests a regulatory review or reports to RRC through Regulatory Reform Bureau.
MX	Regulatory Improvement Commission (COFEMER)	Agency	Economy		
NL	Administrative Board for Administrative Burdens (ACTAL)	Agency	Ministry of Finance/Interior	ACTAL's has an annual plan, which is endorsed by the Minister of Finance and the Minister of Interior and Kingdom Relations, and which is submitted to Parliament. Directives on legislations, which cover general quality criteria, rules of procedure and legal and editorial instructions	

	Name	Unit	Reporting	Co-ordination arrangements with line Ministries/ public sector bodies	General obligations resulting from oversight arrangements with ministries
NL	Regulatory Reform Group	Unit	Finance & Economy	Each ministry has to report to RRG on the progress in reduction of administrative burdens for businesses. Reporting to the ministers for Finance and Economic Affairs, the Cabinet and quarterly to Parliament on general progress	Reporting is obligatory.
POR	Secretary of State for Admin. Modernisation (SEMA)	Unit	COG	SEMA has its own action plan and co-ordinates the Simplex programme (based on annual plan - 2006,2007,2009), There is no law requiring ministries to participate in the simplification project. SEMA co-ordinates with 15 ministries on policy issues. There are ad-hoc inter-ministerial task forces or working groups. AMA, under SEMA, draws on two inter-ministerial networks with representatives from all ministries, one for modernisation and simplification, and another one for ICT. AMA also co-operates with other ad hoc inter-ministerial task force or working groups.	Resolution of the Council of Ministers 196/2008 sets the 25% burden reduction target.
POR	Secretary of State /Centro Juridico (CEJUR)	Agency	COG	Rule of procedures provide framework for relations with ministries.	
POR	Regulatory Reform Unit	Unit	Economy		
SWE	Better Regulation Council	Council	Government as a whole	The Council will scrutinise all proposals for new or amended regulations (laws, ordinances and other regulations) from both ministries and government agencies that could affect the working conditions, competitiveness or other issues relevant to businesses, with a view to speeding up culture change for more effective impact assessment. As part of its work, the Better Regulation Council is expected to maintain continuous contacts with business organisations.	
SWE	The Swedish Agency for Economic and Regional Growth (Tillväxtverket)	Agency	To the Ministry of Enterprise	The agency supports and development of impact assessment methodologies and the measurement (baseline and update measurement) of administrative burdens – in close co-operation with consultants, ministries, government agencies and business organisations.	

	Name	Unit	Reporting	Co-ordination arrangements with line Ministries/ public sector bodies	General obligations resulting from oversight arrangements with ministries
SWE	The Better Regulation team, Division for entrepreneurship at the Ministry of Enterprise, Energy and Communication	"Unit"	To the Minister for Enterprise	The unit is the main co-ordinator for Better Regulation and the closest to an "overall co-ordinating unit". It supports and monitors cross-government work on better regulation, simplification of regulation and reduction of administrative costs. Work on better regulation within government offices is also supported by the State Secretary Steering Group for Better Regulation, chaired by a State Secretary at the Ministry of Enterprise, and an inter-ministerial officials group, chaired by an official from the Better Regulation team in the unit.	
UK	Better Regulation Executive	Unit	Economy	The executive chair of the BRE continuously informs the Prime Minister on departments' progress on the Better Regulation agenda. Network of better regulation ministers, who are accountable for BR. Departments also have Board level Champions – ensuring that departmental board members are committed to Better Regulation Units – advising and supporting policy makers in their departments.	Impact Assessment sign-off by Ministers – updated IA requires a formal sign-off from the responsible Minister.
UK.	Reducing Regulation Committee	Council of Members of Cabinet	Parliament	In fact, the Reducing Regulation Committee is made of 8 Ministers (including the Secretary of State for Business Innovation and Skills, the Secretaries for Transport, for Environment Food and Rural Affairs, the Minister for Business and Enterprise, the Ministers of State-Cabinet Office, Europe, Pensions, the Chief Secretary to the Treasury and the Minister for Cabinet Office/Paymaster General.	The RRC has the final decision power on regulatory matters inside the Executive.
UK.	Regulatory Policy Committee	Council	Independent, Parliament	The RPC oversees all the Impact Assessments.	
USA	Office of Information and Regulatory Affairs (OIRA)	Unit	COG	System of return letters commenting on Agencies' regulatory proposals, and prompt letters to invite agencies revise or update specific pieces of regulation.	Agencies have to submit significant draft regulations (both proposed and final) to OIRA for an up-to-90-day review before publishing them in the Federal Register.

Source: OECD Secretariat, based on an inventory from Desk-based research, EU 15 reports and other relevant information.