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**REGULATORY PERFORMANCE – EX-POST EVALUATION OF REGULATORY POLICIES**

**Note by the Secretariat**

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*As a basis for the Committee's discussions, this note presents preliminary findings and analysis of the on-going project on Ex-post Evaluation of Regulatory Policies, including results from a survey carried out in the second half of 2003. Proposed issues for discussion are set out at the end of the note.*

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## REGULATORY PERFORMANCE – EX-POST EVALUATION OF REGULATORY POLICIES

### 1. Introduction

#### *Why evaluate regulatory policies?*

1. Regulatory processes need timely, high-quality economic and technical analysis that is capable of speaking to both general and technical policy audiences to assist in decision-making and to assure the integrity of the regulatory process. But how do we know when the applied regulatory tools and institutions actually achieve these goals? Do regulatory policies deliver high quality regulation and better regulatory results?

2. There is a growing interest among OECD governments in answering these questions. This reflects three inter-related developments: First, policy-makers involved in regulatory policies are being held *accountable* for the significant economic resources as well as the political capital invested in regulatory management systems now established in most OECD countries. Second, there is a growing interest in exploring how regulatory policies can be more *evidence-based*. And third, the move toward ex-post evaluation is part of the *progressive development* of regulatory policies, complementing the previous focus on design and implementation.

3. Recognising the importance of these developments, the Public Governance Committee (PGC) and its Working Party on Regulatory Management and Reform in 2003 initiated work on ex-post evaluation of regulatory policies. Taking into account the complexity and possible resource implications, the PGC decided to take a gradual and pragmatic approach, initially focussing only on the evaluation of regulatory tools and institutions.<sup>1</sup> Commonly used regulatory tools include Regulatory Impact Analysis (RIA), consultation and communication mechanism and simplification measures. Regulatory institutions include units with regulatory oversight responsibilities, enforcement agencies, independent regulators and one-stop shops.

#### *Project outcome and objectives*

4. The project is expected to contribute to the improvement of governments' strategies to evaluate and monitor the performance of regulatory policies. The objectives are:

- To establish an overview of member countries' practices and experience with ex-post evaluation of regulatory tools and institutions;
- To identify and assess notable practices and methodologies for the assessment and monitoring of regulatory tools and institutions; and

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<sup>1</sup> The focus of the project at this stage, thus, is not on assessing regulations themselves, nor on how particular regulatory tools and institutions are used or designed. The focus is solely on the policies, strategies and concrete experiences relating to the *assessment of regulatory tools and institutions*.

- To develop and propose specific guidelines for government strategies to evaluate regulatory tools and institutions.

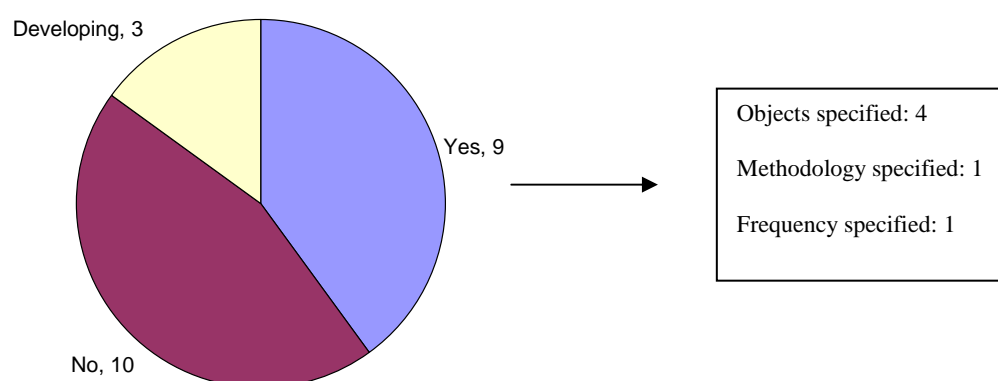
5. In the second half of 2003 the Secretariat carried out a survey of Member country practices and experiences with the evaluation of regulatory tools and institutions. Preliminary results as well as other expert contributions were discussed at an expert meeting on 22 September 2003.<sup>2</sup> A final report is expected to be completed late 2004. It will include a consolidated inventory of member countries' practices, a classification of different approaches to evaluating regulatory tools and institutions and, based on this, a toolbox with operational guidance, methodologies and examples on evaluation exercises. As a basis for the Committee's discussion, this note presents findings and preliminary analysis of the survey.

## 2. Organisation and focus of evaluation efforts

### *Strategies*

6. Nine out of 22 surveyed member countries<sup>3</sup> have an explicit strategy or policy on *ex post* evaluation of regulatory tools and institutions, cf. figure 1. Of these, four have strategies specifying which tools and institutions should be evaluated; one, the frequency of the evaluations, and one guidance on the methodology of evaluations. Three countries are in the process of developing regulatory evaluation strategies.

Figure 1: Does an explicit and current policy/strategy on *ex post* evaluation of regulatory tools and institutions exist in your country?



7. In most OECD countries, rather than being stand-alone policy documents, governments' strategies to the evaluation of regulatory tools and institutions are part of broader regulatory or evaluation policies.

<sup>2</sup> The expert meeting was attended by 72 delegates representing 32 delegations. Proceedings, papers and presentations from the expert meeting are available from [www.oecd.org/gov](http://www.oecd.org/gov)

<sup>3</sup> Australia, Belgium, Canada, the Czech Republic, Denmark, Finland, Germany, Greece, Hungary, Ireland, Italy, Japan, Korea, Mexico, the Netherlands, New Zealand, Norway, Spain, Sweden, United Kingdom, United States. The European Commission also participated.

8. The approaches to the evaluation of regulatory tools and institutions seem to mirror countries' overall approach to regulatory management. Member countries with traditions for elaborate, centrally-defined guidance and requirements seem to take a similar approach to the evaluation of regulatory tools and institutions. In the same vein, countries where the regulatory framework is developed *ad hoc* and pragmatically, and with an emphasis on decentralised responsibilities and self-assessment seem to have a less formalised approach.

**Box 1: Examples on policies and strategies to evaluate regulatory tools and institutions**

In **New Zealand**, evaluation and review of regulatory tools and institutions are an integral part of the overall regulatory policy framework. Policy principles and guidance documents stress the importance, and encourage an ethos, of evaluating and reviewing the effectiveness of regulation, including regulatory tools and institutions. For instance, New Zealand's Code of Good Regulatory Practice (CGRP) includes requirements to review regulations systematically to ensure they continue to meet their intended objectives efficiently and effectively. The CGRP also calls on regulators to ensure that regulatory measures are designed so that they can be adjusted and updated as circumstance change. In addition, New Zealand's Generic Policy Development Process (GPDP) emphasises the need for a review strategy that considers the types of information needed to assess the impact of the policy and whether the strategy needs to be in place at the time of implementation. The GPDP's checklist for the implementation and review stage of the policy process also prescribes that monitoring and evaluation procedures are in place that consider whether i) the regulation is effective in achieving the policy objective; ii) the regulation is efficient; and iii) there are any unintended effects.

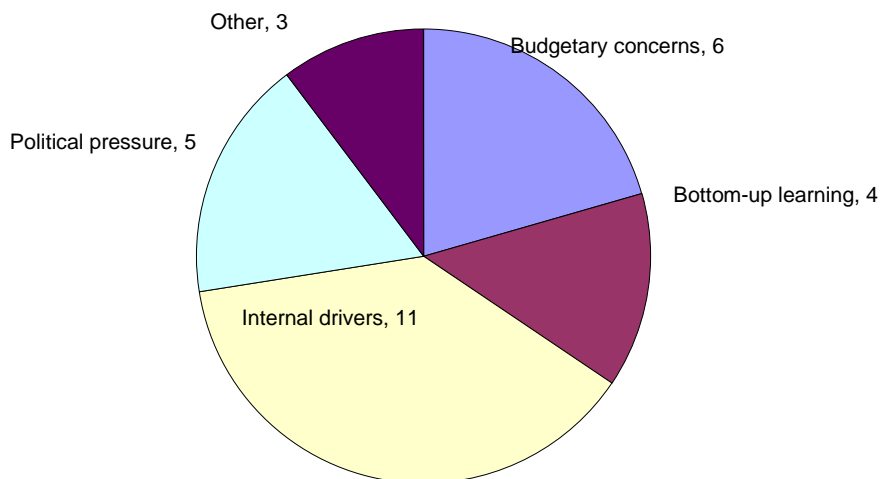
In the mid 90s, **Canada** introduced quality assurance to its regulatory process to enhance compliance with the Regulatory Policy, through a standards-based approach for assuring that sound systems were in place for the regulation-making process. Canada introduced the Regulatory Process Management Standards (RPMS) but also took on providing guidance for implementation and assessing government-wide capacity. Standards were a way to increase accountability for compliance in departments and to do so earlier in the process (not rely solely on an end-of-the-pipeline check). In 2001, departments and agencies undertook an initiative to develop a common understanding of performance measurement in the context of the Regulatory Policy, to take stock of current "regulatory performance measurement" practices in the management of regulatory programmes and to identify potential indicators. While there is no explicit, government-wide strategy in place which focuses on regulatory programmes (to the exclusion of other programmes), early work is under way to provide institutions with guidance for the application of performance measurement strategies. Ultimately, it is expected that this guidance will provide the basis for a more systematic basis of evaluation data, including information needed for future evaluation of the effectiveness of regulatory tools and institutions.

In **Sweden**, strategies to evaluate regulatory tools and institutions are not expressed in one particular policy document. Several provisions in laws and subordinate regulations include requirements for ex-post evaluation. Following the Swedish administrative tradition with a high degree of decentralised responsibility to each department/ministry and agency each department and agency has a responsibility to continuously evaluate the regulatory tools and institutions it applies. Evaluations are not centrally coordinated. The intensity of efforts depends very much on the political interest.

**Drivers**

9. The majority of countries indicated that their regulatory evaluation policy was primarily internally driven, i.e. by the ongoing pragmatic development and improvement of regulatory policy, cf. figure 2. At the same time, budgetary concerns, positive experiences from evaluations from individual agencies and institutions (bottom-up learning), as well as political pressure play an important role in facilitating regulatory evaluations in several countries.

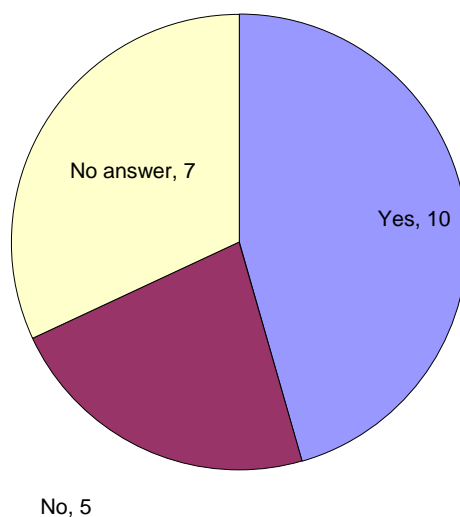
Figure 2. Which are the most significant drivers in the process of evaluating regulatory tools and institutions? (multiple answers possible)



**Responsibility and execution**

10. There is no uniformity in terms of the agencies and units that are responsible for evaluating regulatory tools and institutions: different countries use different solutions. In some countries, specific units or agencies are responsible for monitoring and implementing evaluations; in other cases, the responsibility lies within the individual ministries.

Figure 3. Is there a dedicated agency or unit responsible for the policy?



11. Who actually *carries out* the evaluations, however, seems to be related to the type of agency or unit *responsible* for the review. In countries where the responsibility for the evaluations often rests with line ministries (in particular Nordic countries and the Netherlands) there is tendency to draw on external institutions – such as consultancies and research institutes – in carrying out the evaluations. In cases where the responsibility for evaluations is with independent audit agencies (such as the NAO in the UK and the GAO in the US) these agencies often tend to carry out the evaluations themselves.

12. The use of external consultants to carry out evaluations gives important flexibility in the planning and allocation of resources. The advantage of evaluations carried out in-house, on the other hand, is that it ensures or facilitates the establishment of evaluation capacities. A fruitful and efficient use of outside consultants requires that government agencies maintain some core competencies on substantive issues. Without capacities to manage and properly define the framework for external consultants' contributions, evaluations may end up adding little value.

### ***What is evaluated?***

13. Seen across all OECD Countries, nearly all regulatory tools and institutions have been subject to evaluation efforts. The most commonly evaluated tools are RIAs, consultations procedures and simplification mechanisms. The most frequently evaluated institutions are independent regulators and enforcement agencies.

14. Some evaluations are broad based, embracing different sectors and regulatory areas, while other evaluations are focussing on the application of regulatory tools or institution in one specific area. Methodologically, surveyed countries favour a non-prescriptive approach given the potentially wide ranging differences between different regulations, regulatory tools and institutions in terms of their objectives and design. The use of methods are often described as “*ad hoc*” or applied on an “individual” basis.

### **3. What are the results?**

15. Surveyed countries reported a series of specific examples for reforms and improvements introduced as a result of evaluations in different regulatory tools and institutions. Evaluations are reported to have led to improvements in RIA processes, methodology and compliance; reconfiguration of sector regulations in financial and communication sectors, and improvements in consultation in regulatory proposals. Sometimes the results confirm the success of programmes or the proper functioning and set up of tools and institutions. Evaluations are not always followed by dramatic reform actions. In this sense, the lack of change should not always be interpreted as failure.

16. In addition to the specific findings of the evaluation projects, many countries reported further benefits in terms of increased awareness and interest in regulatory management and reform from parties involved in the reviews. Results of the survey also indicate that successful and advanced practices need not be supported by strongly institutionalised procedures. Successful and advanced practices seem to be contingent on and underpinned by a strong culture/ethos of regulatory improvement and review.

### **4. A preliminary classification of tests**

17. Countries apply a variety of different tests to evaluate their regulatory tools and institutions. A classification of these tests could be instrumental in organising a useful inventory of country practices, and in indicating criteria for when certain tests may be more useful than others. As a preliminary classification of tests, this note suggests classifying tests in three broad categories: Compliance tests, performance tests and function tests. The classification is based on tests applied by OECD countries, as well as the identification of new tests considered to be relevant for the evaluation of regulatory tools and institutions.

### *Compliance tests*

18. Compliance tests are evaluations checking that regulatory tools and institutions are applied in accordance with formal standards and requirements. Typically such assessments ask whether RIA or consultation mechanisms meet the applicable guidelines, or, in the case of regulatory quality assurance units, whether regulators have tabled draft regulations for reviews by this unit in accordance with internal government procedures. Some examples:

- In **Mexico**, Cofemer, the central body in charge of promoting regulatory quality, is currently carrying out a review of the quality of RIAs submitted for proposed regulation. The purpose is to assess the degree to which ministries and regulatory authorities are complying with the guidelines for carrying out RIA. This is intended to assist Cofemer in training regulators by identifying areas where quality is inadequate and allowing for discussion regarding the corresponding reasons;
- In the **United States**, an extensive examination of RIA can be found in ongoing work by Robert Hahn and colleagues. Hahn et al. (2000)<sup>4</sup> examined 48 RIAs in federal agencies in the United States prepared between 1996 and 1999. They determined whether the RIAs met specific legal requirements and satisfied the guidelines produced by the Office of Management and Budgeting (OMB). Hahn et al. refer to their method as “scoring;” It essentially is a checklist to determine whether certain items are included in the RIA (i.e. monetising costs, discussion of alternatives to the regulation, calculation of benefits and costs of alternatives, readability, etc.).

19. Compliance tests are the most frequently applied test, and at the same time probably the least expensive and methodologically demanding. This “checklist” or “scoring” approach has the advantage of providing a transparent, easily comparable and efficient check-up on the performance of regulatory tools and institutions. The validity of such tests is based on the assumption that compliance with government guidelines is necessary and supportive for regulatory quality. However the compliance with such requirements is not sufficient for regulatory quality.

### *Performance tests*

20. Performance tests are concerned with the quality of the applied regulatory tools and institutions, rather than simply their existence.

21. For RIAs this kind of tests would examine whether the RIA avoids *errors*, such as double counting of benefits or costs, improper discounting, etc. They could also examine the *transparency* and clarity of the RIA. Do the authors explain how they arrived at their conclusions? Do the authors define an appropriate baseline? Finally, performance tests for RIAs could also examine the outcomes of regulations *ex post* and compare actual results to the predicted/forecasted outcomes in the RIA. This kind of performance test, in other words, tests the *predictability* of RIAs. Comparisons between ex-ante estimates and ex-post assessments of how regulatory costs and benefits actually developed can point out systematic errors in ex-ante assessments, and indicate implications for redesigning regulatory policy.

- Only very little actual work has been carried out on the predictability of RIAs or other ex-ante estimates with the actual ex-post costs. However an independent study from 2001

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<sup>4</sup> Hahn, Robert W et al. (2000): *Assessing the quality of regulatory impact analysis*. Working Paper 00-01. AEI Brookings. Hahn et al (2000): *Assessing regulatory impact analysis: The failure to comply with executive order 12,866*. *Harvard Journal of Law and Public Policy*, July 2000.

covering environmental regulatory programmes in the United States indicated that ex-ante estimates tended to exceed actual costs, mainly due to difficulties in defining baselines and estimating compliance costs and because RIAs often ignored the possibility of technological change;<sup>5</sup>

- In a review of its Business Test Panels (BTP), **Denmark** also evaluated the predictability of the panels' ex-ante assessments of the administrative burdens expected to be incurred by new regulations. The review found an uncertainty in the BTP's estimates of administrative burdens ranging from 40 to 60% on average.

22. For consultation mechanisms, performance tests could include looking at *response profiles*, i.e. response rates and volumes from different groups (or, in the case, of hearings and meetings, attendance rates). It would also include *evaluation of ex-post processing of responses by regulators*, addressing questions such as: Are there meetings to evaluate responses? Do decision makers read all responses, or are summaries produced? Are advisory bodies involved in assessing responses? Other tests include *quality assessments of consultation document* and *evidence checking*: Is evidence produced during consultations adequately reflected in final documents? Is negative evidence (i.e. evidence that would count against the proposals or decisions of the regulator) adequately displayed?

#### **Function tests**

23. Function tests look at the effect on regulatory outcomes, that is, how the application of regulatory tools and institutions contribute to improving regulations and the regulatory decision-making process. This sort of analysis would examine, for example, changes made to draft regulations as a consequence of information, analysis and estimates made available during the regulatory process.

24. Examples of tests include *audit trails*, checking whether new options raised and identified in the regulatory process are subsequently evaluated against pre-specified options. Other tests could look at *incidence of policy changes*, that is, assessments of the extent to which decisions have, in fact, been sensitive/responsive to information provided during consultation. Function tests would also look at consequences of the intervention of central oversight units responsible for promoting regulatory quality. Finally, function tests could also look at the changes in the administrative culture among regulators as a consequence of working with various regulatory tools and institutions.

25. One of the clearest lessons of a number of case studies is the critical importance of *timing* to the usefulness of regulatory tools. If, for example, RIAs and consultations are not initiated until after the regulatory process is well underway, these tools obviously have difficulty being influential. Worse, it puts pressure on the analyst not to deliver bad news about benefits and costs, especially about the preferred alternative, leading to cynicism about the nature of the regulatory process.

- In the **United Kingdom**, the National Audit Office (NAO) supported by the Cabinet Office's Regulatory Impact Unit has prompted a series of projects aiming at improving the quality of RIAs. In 2000-2002, the NAO examined a sample of 23 RIAs across 13 departments and agencies to study the way in which RIAs were prepared and to identify the scope for learning lessons. The NAO reported examples of good practice and set out key features of RIAs which add value to policy making and the further steps that departments and the Cabinet Office could take to improve the RIA process;

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<sup>5</sup> Harrington, Winston, Richard D. Morgenstern and Peter Nelson (2001): On the Accuracy of Regulatory Cost Estimates. *Journal of Public Policy and Management* 19(3).



- In a review of its Regulatory Impact Statement system, **New Zealand** has noted that the introduction of RIA framework has begun to change the structures and practices involved in the development of regulatory proposals, for instance by encouraging departments to use the RIA framework as a policy development tool rather than seeing it as a retrospective transparency tool;
- In the same vein, a review of the **Canadian** RIA system, published in 2000, concluded that one important effect of establishing a RIA system was a long term “cultural” change among regulators, leading to a stronger appreciation and awareness of the benefits of the RIA system.

26. The table below summarises how types of compliance tests, performance tests and function tests can be applied to assess two of the most commonly applied regulatory tools – RIA and consultation mechanisms – as well as regulatory quality assurance units.

**Table 1. A preliminary classification of tests to evaluate regulatory tools and institutions**

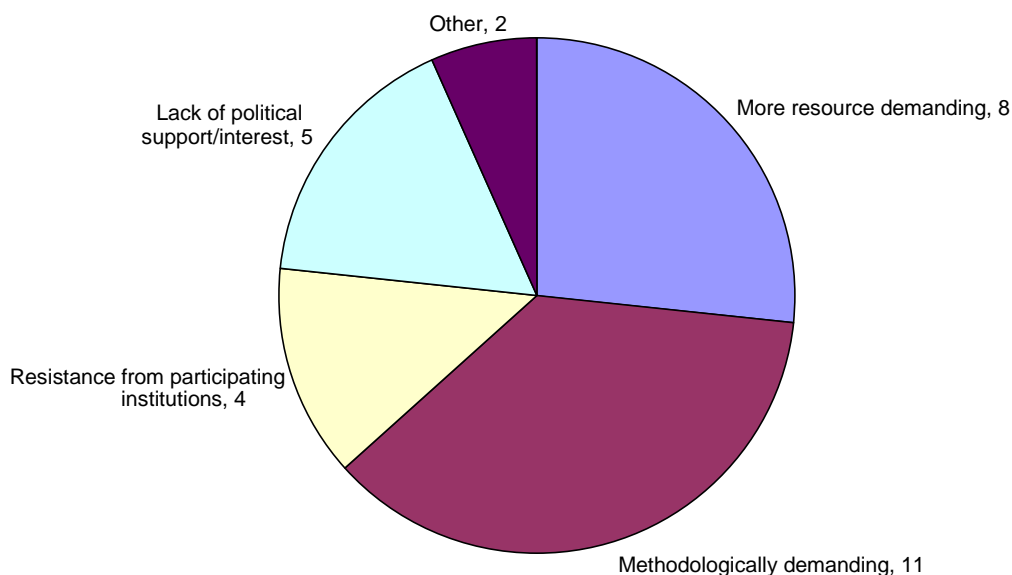
	<b>Compliance tests</b> (Process focus)	<b>Performance tests</b> (Output focus)	<b>Function tests</b> (Outcome focus)
Regulatory Impact Analysis (RIA)	<i>Checks compliance with formal RIA requirements, i.e. does the RIA discuss regulatory alternatives and monetise anticipated regulatory effects?</i>	<i>Intensive tests: Quality review of RIA components, i.e. the applied cost-benefit analysis</i>  <i>Predictability tests: Were RIA forecasts correct?</i>	<i>Timing (as an indicator for effect): Was the RIA process initiated early (before) the regulatory process?</i>  <i>Audit trails: Are options identified in the RIA process subsequently evaluated against pre-specified options?</i>
Consultation mechanisms	<i>Checks compliance with formal consultation requirements, i.e. did the consultation adhere to minimal notification periods?</i>	<i>Response profiles</i>  <i>Quality assessment of consultation document</i>  <i>Processing of responses by regulators</i>  <i>Evidence checking: Is evidence produced during consultations adequately reflected in final documents</i>  <i>Controlled experiments: How easy is it to discover and understand relevant information?</i>	<i>Incidence of policy changes: Have decisions been sensitive/responsive to information provided during consultation?</i>  <i>Audit trails: Are options identified in the consultation process subsequently evaluated against pre-specified options?</i>
Regulatory Quality Assurance Units	<i>Checks compliance with formal obligations, i.e. did the unit receive and screen all draft regulation?</i>	<i>Number of interventions / suggested revisions over time</i>  <i>Quality review of the units' review activities</i>	<i>Survey of regulators: Is there an increasing appreciation of an early integration and comprehensive appraisal of regulations in the policy process?</i>

27. Preliminary analysis of country experiences indicate that compliance tests may be more appropriate for regulatory tools and institutions that have been introduced only recently (say, in the last 1-3 years), whereas performance and function tests appear to be more relevant in more experienced regulatory management systems with a certain record of results and experiences behind them.

## **5. Institutional and Methodological Challenges**

28. Countries consistently report resource requirements and methodological difficulties as the most significant challenge encountered in the process of evaluating regulatory tools and institutions. Resistance from participating institutions and the lack of political support also cause difficulties in some countries. Countries also noted that evaluations can face problems and resistance from target institutions who believe they are subject to “yet another reporting requirement”.

Figure 4. **What have been the most significant challenges encountered in the process of assessing regulatory tools and institutions?**  
(multiple answers possible)



29. Possibly the most important challenge is to develop a procedure for the routine completion of ex post analyses of regulatory outcomes. Comprehensive ex post analyses that examine regulatory outcomes and costs are very rare, yet obviously needed.

30. One important barrier to more complete ex-post analysis is institutional: the need to find a home for audits of regulatory performance, cost, and other implications of regulation. “Line” agencies – the agencies that prepare the rules in the first place – sometimes appear reluctant to undertake such studies. They rarely have the budget to do it, and many in the agency would think it to be beyond their mission. Also, some may question whether the promulgating agency would have conflicts that would get in the way of a balanced assessment.

31. Another barrier is data. There are often problems just finding out what the regulatory outcomes were. Collecting and reporting the data consistently is yet another problem. There may also be historical problems, trying to determine the *status quo* (what the world was like before the regulation was implemented) or establish a baseline (what would have happened in the absence of regulation).

32. A third important barrier is cultural. Embedding an administrative culture with positive values attached to (systematic) evaluation and evidence-based policy making is a long-term challenge. As described in the following Section, these well-known problems of policy analysis can to a considerable degree be reduced by the regulatory process itself.

## 6. Towards More Systematic Monitoring of Regulatory Performance?

33. Discussions at the September 2003 expert meeting showed interests among member countries to go beyond the evaluation of regulatory tools and institutions into broader and related issues on the “regulatory performance agenda”. One of these issues was approaches to more systematic measuring and monitoring of regulatory performance.

34. Apart from ad-hoc reviews of existing regulations carried out in most OECD Countries, it may be useful to distinguish between three approaches to report and monitor regulatory performance, varying according to their comprehensiveness and coherence as well as to their integration with other evaluation and assessment programmes.

35. One approach includes *annual government reports* on the overall status of regulatory reform or on progress in particular programmes (notably on administrative simplification).

- In **Italy**, for example, primary legislation introduced in July 2003 provides for the Government to submit to parliament, together with the bill for the annual regulatory simplification law, a status report outlining overall results of the simplification and regulatory reorganisation activities;
- **Norway**, in follow up to OECD's regulatory reform review, is currently considering a similar approach by which the government in an annual report presents and assesses recent regulatory reform developments, and outlines new initiatives;
- In the **United States**, the Paperwork Reduction Act requires the Office of Management and Budget (OMB) to report annually to Congress on the paperwork burden imposed on the public by the Federal government and efforts to reduce this burden.

36. Such reporting mechanisms seem valuable in establishing a high-level appraisal - although at a general level – of progress and challenges for regulatory performance. This reporting mechanism, however, does rarely provide for comprehensive reviews of the performance of individual or groups of regulations.

37. *Review clauses* constitute a second approach to more systematic monitoring of regulatory performance. Review clauses are requirements in regulations for reviews to be conducted within a certain period. They can act as a powerful adjunct to ex ante RIAs by checking the performance of regulations against initial assumptions.

- **Japan's** recent regulatory reform programmes have required the inclusion in new regulations of a fixed schedule for future review. Much regulation has already incorporated requirements to ex post review after a fixed period of time, with review periods ranging from about 3 to 10 years after introduction.
- The **United Kingdom** has recently taken steps to make systematic the use of automatic review mechanisms. RIA requirements implemented during 2000 include an obligation for regulators to set out how any proposed regulation would be monitored and reviewed. Moreover, recent policy proposals would require every government department to conduct an ex post review of the impact of major pieces of regulation within three years of their implementation;
- In **Australia**, the 1995 National Competition Policy agreement established a highly structured generalised review process according to which legislation which restricts competition and which has been reviewed/reformed must be reviewed again at least every 10 years.

38. In addition to supplementing ex ante assessment by checking regulatory performance against initial objectives and assumptions, this kind of reviews may also be a suitable platform to evaluate the applied regulatory tools and institutions. The flip-side of review clauses, however, is that they may create a situation where streams of reviews of individual regulations lead to an unintended "itemised", ad-hoc

evaluation approach. This again may jeopardise the assessment of regulatory performance against larger government objectives, not explicitly set out in the individual regulations.

39. Ideally, a third approach to more systematic monitoring of regulatory performance would be characterised by being more comprehensive (i.e. including all regulations) and consistent (i.e. subjecting regulations to identical review criteria), and providing a framework for assessing regulatory performance in a broader “good governance” and policy performance context. The latter would include transparency and participatory elements, as well as the possibility to assess and compare policies promoted with different policy tools (i.e. regulatory or budgetary).

40. The approach under the Program Assessment Rating Tool (PART) launched in the United States in 2002 comes close to these principles. Within PART, “Regulatory Based Programs” constitute one out of seven different types of Federal Programmes. Using PART, each resource management office (typically departmental level) of the Office of Management and Budget is obliged to evaluate all programmes under their portfolio over a five year cycle. PART is comprised of a number of assessment criteria on program performance and management. Most assessment criteria are identical for all programs, regardless the tools applied. Fundamentally, PART is focused on outcomes of programs. This allows for a more comprehensive approach to assess program performance, i.e. by looking at the combined effect of program operations including, for instance, the effect of several regulatory measures to reach one particular policy goal. Under PART, all Federal programmes are rated on a scale from 0-100% according to the scores on four dimensions: Program Purpose & Design; Strategic Planning; Program Management, and Program Results/Accountability. Programmes are also provided an overall rating (i.e. effective/moderately effective/adequate/ineffective/results not demonstrated). These ratings are used to propose legislative revisions and new funding levels, as well as management or program improvements.

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41. These systematic efforts point to the fact that, to a considerable degree, the data and institutional challenges identified in the previous section, and possibly the “cultural challenges” as well, can be reduced by an improved design of the regulatory process itself. As part of the regulatory process, regulators should consider the design of a potential *ex post* analysis of the regulation and the applied regulatory tools: When it should be done, how it could be done, and what it would cost. With this information in hand, policy-makers can decide at the time the regulation (or other policy measures) is issued whether to invest in data and model development that would permit an *ex post* analysis. A well-done RIA, for example, will have data on the pre-regulatory environment and models establishing a baseline. In short, the best time to begin an *ex post* evaluation of a regulation is before the regulation becomes effective.

42. However as the above sections have illustrated, ex-post evaluation of regulatory policies goes beyond evaluating regulatory tools and institutions, and possibly also beyond evaluation of individual regulations and regulatory regimes into a broader governance agenda. Capacities and procedures to monitor regulatory performance seem to benefit from being embedded in performance assessment programmes that cut across different policy tools.

## 7. Issues for discussion

43. Against this background, the Committee may wish to address the following issues:

1. Does the preliminary classification of tests to evaluate regulatory tools and institutions provide a useful and comprehensible overview? How could it be improved?
2. What are your experiences in striking a reasonable balance between top-down and bottom-up driven (regulatory) evaluation efforts? Is there a tradeoff between, on the one hand, the benefits

of coherence, comprehensiveness and validity in more centrally defined and driven policies, and on the other hand, the benefits of innovation, self-assessment and flexibility in decentralized approaches?

3. What are your views on attempts to establish more systematic evaluations of regulatory policies (as described in Section 5)? Is there a trade-off with other policy evaluation efforts? Should regulatory performance assessments be consolidated and integrated in broader evaluation and performance assessments efforts?
4. What are the possible synergies between the evaluations of regulatory policies with other evaluation efforts? How can such synergies be “captured” and utilized?
5. How have institutional and cultural barriers to regulatory policy evaluations been addressed in your country?