

**PUBLIC GOVERNANCE AND TERRITORIAL DEVELOPMENT DIRECTORATE
REGULATORY POLICY COMMITTEE**

OECD Best Practice Principles on Stakeholder Engagement in Regulatory Policy

Final Draft

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OECD BEST PRACTICE PRINCIPLES ON STAKEHOLDER ENGAGEMENT IN REGULATORY POLICY

FINAL DRAFT

EXECUTIVE SUMMARY

1. The central objective of regulatory policy – ensuring that regulations are designed and implemented in the public interest – can only be achieved with help from those concerned by regulations – the “stakeholders”. Since regulation is seen as one of the fundamental powers of the state, stakeholder engagement is integral to all stages of the Regulatory Governance Cycle. Stakeholders should not only be consulted when new regulation is being developed, they should actively participate in the subsequent processes arising from regulating.
2. Stakeholder engagement increases the information available to governments on which they base policy decisions. The use of other policy tools, particularly RIA, and the weighing of alternative policy tools, has made consultation increasingly needed for collecting and checking empirical information for analytical purposes, measuring expectations and identifying non-evident policy alternatives, including non-regulatory options when taking a policy decision.
3. The aim of the *OECD Best Practice Principles on Stakeholder Engagement in Regulatory Policy* is to provide policy-makers and civil servants in both OECD member and partner countries with a practical instrument to better design their stakeholder engagement strategies. At the same time they inform citizens, civil society and other stakeholders of what to expect and demand from stakeholder engagement mechanisms. The objective is to complement the 2012 *Recommendation on Regulatory and Policy Governance*.
4. Particular attention is paid to the objectives of regulatory policy and governance. More specifically, the aim is to make regulatory policy and governance more inclusive, to strengthen the accountability of governments when developing, reviewing and enforcing regulations and to improve the effectiveness and efficiency of stakeholder engagement processes in gathering valuable input for improving countries' regulatory frameworks. The *Best Practice Principles* might also provide a useful reference for governments' practical guidance and capacity building initiatives.
5. The primary focus of the *Best Practice Principles* is on central governments (and their institutions, such as individual ministries, departments, independent agencies such as economic regulators), most of them can also be applied, with a certain degree of adaptations, by subnational governments.

Box 1. OECD Best Practice Principles on Stakeholder Engagement in Regulatory Policy

Governments should establish a clear policy identifying how open and balanced public consultation on the development of rules will take place.

- A clear, cross-cutting, government-wide guiding policy should exist on how to engage with stakeholders when drafting, implementing and reviewing regulations, with clearly stated objectives.
- Leadership and strong commitment to stakeholder engagement in regulation-making are needed at all levels.
- Capacities in public administration to conduct effective and efficient stakeholder engagement should receive adequate attention. Governments should create mechanisms ensuring that civil servants adhere to the principles of open government and stakeholder engagement in regulatory policy.
- Governments need to plan and act strategically by, for example, planning ahead to allow sufficient time for stakeholder engagement, dedicate sufficient financial resources to stakeholder engagement activities and determine how and when to engage stakeholders at the different stages of developing regulatory proposals.

Mechanisms and institutions to actively provide oversight of regulatory policy procedures and goals, support and implement regulatory policy should be established.

- Control and oversight of the quality of engagement activities and compliance with the engagement policy should exist within all administrations. Clear competences for co-ordinating and promoting stakeholder engagement in regulatory policy across the administration should be established.

Governments should co-operate with stakeholders on reviewing existing and developing new regulations.

- It is important that the engagement policy covers each stage of the Regulatory Governance Cycle.
- Stakeholder engagement should be proportionate to the significance and impact of regulations, there should nevertheless be full transparency and predictability and a certain level of uniformity of the process; there should always exist an opportunity for every stakeholder to express their views and provide inputs.
- Stakeholder inputs should be solicited when there is still sufficient time for the comments to be taken on board.

Governments should actively engage all relevant stakeholders during the regulation-making process and designing consultation processes...

- Governments should try to reach out to those who are usually least represented in the rule-making process. Potentially affected foreign interests should not be excluded from the engagement process.
- Governments should avoid overreliance on consulting advisory bodies or expert groups.

... to maximise the quality of the information received...

- Administrations need to provide stakeholders with the most relevant and timely information available.
- Governments have to provide stakeholders with sufficient time to submit their views. Clear timelines must be set and publicised for stakeholder engagement activities
- It is important to choose consultation tools that are suitable for the types of stakeholder engagement and for the right phase of the engagement process.

- Central consultation portals should be created. Governments should not be afraid to experiment with new tools but they should also mind the digital gap.
- Governments should consider the stakeholders' perspective and use effective approaches in engaging citizens based on their particular circumstances and considerations; it might be necessary to educate stakeholders to the engagement culture.
- Governments have to be aware of and try to prevent 'consultation fatigue' among stakeholders.

...and its effectiveness.

- It is necessary that administration explains how stakeholder input has been assessed and incorporated in the decisions reached.
- When processing stakeholders' input, it is necessary to balance different interests and prevent 'regulatory capture' by strong lobby groups and special interests. Clarifying that the objective of stakeholder consultations is to obtain information for the benefit of the public as a whole may help deflect pressures to listen to the loudest voices.

Governments should consult with all significantly affected and potentially interested parties, whether domestic or foreign, where appropriate at the earliest possible stage while developing or reviewing regulations

- Engaging with stakeholders should therefore start as early as possible in the process.

Governments should make available to the public, as far as possible, all relevant material from regulatory dossiers including the supporting analyses, and the reasons for regulatory decisions as well as all relevant data.

- To obtain useful input from the public during stakeholder engagement, it is necessary for the government to provide specific information. Taking into account the perspective of stakeholders and depending on the stage of the consultation process, consultees will be more likely to participate if regulators provide detailed, complete information, rather than general descriptions.

Governments should consult on all aspects of impact assessment analysis and use impact assessments as part of the consultation process.

- Stakeholder engagement should be closely integrated with Regulatory Impact Assessment.

Governments should structure reviews of regulations around the needs of those affected by regulation, cooperating with them through the design and conduct of reviews including prioritisation, assessment of regulations and drafting simplification proposals.

- Governments should listen to the perception of regulation by stakeholders all along the Regulatory Governance Cycle.
- Engaging stakeholders can provide invaluable insights into any effort to evaluate the outcome of policymaking *ex post* and help policymakers to understand the real impact and performance of the policy.
- Stakeholder involvement can greatly assist *ex post* evaluation and strategies to identify priority areas for review and reform.

Governments should regularly evaluate both their stakeholder engagement policy as well as individual engagement activities towards achieving their goals.

- While it is not possible to identify a one-size fit all best practice of engagement in regulatory policy, a robust

evaluation system may facilitate the identification of more appropriate methods than others.

All regulations should be easily accessible by the public. A complete and up-to-date legislative and regulatory database should be freely available to the public in a searchable format through a user-friendly interface over the Internet.

- Regulatory transparency requires that governments effectively communicate the existence and content of all regulations to the public. The public should therefore enjoy unimpeded access to regulation, free of charge.

Governments should have a policy that requires regulatory texts to be drafted using plain language. They should also provide clear guidance on compliance with regulations, making sure that affected parties understand their rights and obligations.

- Governments need to ensure that regulatory goals, strategies, and requirements are articulated clearly to the public.
- Special measures should be adopted to support access to regulations by people with specific disabilities.
- Transparency and compliance with regulations should be promoted through the use of appropriate instruments such as guidance, toolkits and checklists.

Introduction

6. The final draft of the *OECD Best Practice Principles on Stakeholder Engagement in Regulatory Policy* [the Principles] is hereby presented for an approval by the Regulatory Policy Committee through a written procedure. The first draft of the Principles was discussed by the OECD Regulatory Policy Committee at its meeting on 3 November 2016. The document has been amended as a follow up to this discussion and written comments received from several member countries after the meeting. This final draft incorporates some of the comments received through public consultations organised in February and March 2017.

Structure and goals of the document

7. The aim of the Principles is to provide policy-makers and civil servants in both OECD member and partner countries with a practical instrument to better design their stakeholder engagement strategies. At the same time they inform citizens, civil society and other stakeholders of what to expect and demand from stakeholder engagement mechanisms. The objective is to complement the 2012 *Recommendation on Regulatory and Policy Governance*. The Recommendation, albeit clear on the necessity to engage with stakeholders and adhering to the open government principles, is rather general on providing specific guidance. The intention of developing the Principles is not to replace the Recommendation but rather to complement it. The Principles should therefore be more concrete, more practically oriented and more specific in its guidance. They use the experience and information gathered through the work on the 2015 Regulatory Policy Outlook and the Regulatory Policy Reviews.¹ The *OECD Framework for Regulatory Policy Evaluation* and the OECD report on *Open Government - The Global Context and the Way Forward* are also used as an important source of information.

8. In addition, the 2012 Recommendation and the Principles are complemented by the *OECD Pilot Database on Stakeholder Engagement in Regulatory Policy* (the Database). The Database presents information and lessons learned from 19 concrete examples of stakeholder engagement practices from OECD Member and Partner countries. These case studies demonstrate how they have implemented the Recommendation through different methods and at different stages in the Regulatory Governance Cycle². The Database examples serve as illustrations of how the Principles may be implemented in practice and could provide inspiration and background information for other countries seeking to adopt a similar practice. Nevertheless, they are not blueprints for good practice. The effectiveness and suitability of concrete stakeholder engagement tools depend on country-specific institutional and cultural contexts, as well as the goals and circumstances of a specific consultation.

9. In these Principles, particular attention is paid to the objectives of regulatory policy and governance. More specifically, the aim is to make regulatory policy and governance more inclusive, to strengthen the accountability of governments when developing, reviewing and enforcing regulations and to improve the effectiveness and efficiency of stakeholder engagement processes in gathering valuable input for improving countries' regulatory frameworks. The Principles might also provide a useful reference for governments' practical guidance and capacity building initiatives.

10. While the primary focus of the Principles is on central governments (including individual ministries, departments, independent agencies such as economic regulators), most of them can also be applied, with a certain degree of adaptations, by subnational governments (see an example from the state of Rhineland-Palatinate, Germany - Box 2).

1. E.g. recently published reviews of Chile, Lithuania, Malaysia, Mexico, Peru, Korea, etc. For the full overview, see www.oecd.org/gov/regulatory-policy/by-country.htm
2. For more information, see [GOV/RPC/RD\(2016\)5](http://www.oecd.org/gov/regulatory-policy/2016/5).

Box 2. Stakeholder engagement in a legislative procedure at the state level in Rhineland-Palatinate, Germany

The state government of Rhineland-Palatinate initiated a state law to enhance accessibility to government documents called “Landestransparenzgesetz” in 2013. The law was ratified on November 27, 2015 and implemented on January 1, 2016. The implementation of the new state law combined formal legislative procedure with a new method to include active participation of citizens.

Upon taking effect, the law requires state authorities to provide access to a certain type of documents on decisions made by the cabinet as well as other documents. Before that, the established procedure was for citizens to claim access to certain documents, stating that they have a vested interest in the release of such information. The proposed new law requires the state government to provide certain documents by reverse of initiative.

A private company IFOK GmbH was commissioned by the state government to co-write a concept on the implementation of public participation in legislative procedures as a new form of combined public participation and formal legislation. The practice of public participation in legislative procedures at state level included the implementation of public participation and the consultation of unions and organisations as the established method of legislative procedure.

The public participation process encompassed a total of seven events, including a kick-off event with Prime Minister Dreyer, and a concluding event to present the results. It also included two offline workshops with stakeholders and interest groups to identify and discuss further proceedings. Participants for the workshops were approached directly. The state chancellery drafted the questions for the workshops. Results of previous workshops were used to modify questions for upcoming workshops, if necessary and appropriate. Comments on the platform were incorporated into the discussion questions as well.

All workshops (except those with local authorities and municipalities) were streamed for online participation, as well as documented, and a live recording was later provided through www.transparenzgesetz.rlp.de. A total of 520 attendees participated in the workshops. A total of 31.124 visits of the website were registered. 162 participants commented online via the provided platform, while 164 comments were made and 181 ratings were given.

Online participation was also enhanced by an online tool *ideactive*. Attendees of the workshops were able to contribute questions and suggestions to a live discussion via their handheld devices. The questions were incorporated into the discussion by a moderator. This allowed any participant to contribute while being reluctant to do so in public.

Studies on the project indicate that citizens are interested in participating in the legislative procedure, and that they are willing to engage in a variety of complex political topics. Given the chance to be heard and seen, citizens are keen to make use of it. These studies also indicate that the practice of public participation has enriched the legislative procedure, improving the wording of the texts with helpful suggestions and constructive criticism. With regard to the political climate of rising anti-immigrant agitation as well as a perceived growing distance between the government and the people, there seems to be a necessity for broader concepts of public participation. Results of the studies show that early participation is the best approach, so that the concept of participation does not feel spurious to the engaged citizenry.

Source : Submission of the German Government

11. The Principles will not be in any way binding for the OECD countries. The Principles should rather provide a list of elements or building blocks of stakeholder engagement efforts in relation to regulatory policy in order for them to be adapted to the variety of legal systems and administrative cultures among the OECD countries. They can inform individual governments, leaving a sufficient degree of flexibility for administrations to adapt those policies according to local conditions.

12. The composition of the Principles is structured around the text of the 2012 Recommendation, especially Recommendation No.2 and 3, using also some other OECD instruments in the area of regulatory policy, especially the *OECD Guiding Principles for Regulatory Quality and Performance (OECD 2008a)*.

Stakeholder engagement - a crucial element of regulatory policy and open and inclusive policy making

13. The central objective of regulatory policy – ensuring that regulations are designed and implemented in the public interest – can only be achieved with help from those concerned by regulations – the “stakeholders”. In this document, the term "stakeholders" potentially includes citizens (in different roles, such as consumers), businesses (both foreign and domestic; including SMEs, importers and exporters, potential investors, etc.), trade unions, civil society organisations (CSOs), media, public sector organisations, etc. The inclusion of stakeholders in the policy making process is also one of the dimensions of Open Government and of Open and inclusive policy making, as defined by the OECD.³

14. While recognising that many intermediate forms of participation exist, the OECD has developed a typology to map the different existing relationships between citizens and governments. They vary from the basic provision of information, which is the weakest form of participation, to full engagement forms such as co-production, co-delivery and co-evaluation, which involves a balanced share of powers among stakeholders. Each of these modalities of participation has different objectives and impacts. From information sharing to co-decision, an increasing level of citizen involvement and influence on policy making can be noted and the influence citizens exert on policy making rises.⁴

15. Open and inclusive policy making as promoted by the OECD is a culture of governance that builds upon the idea of opening up policy-making processes to stakeholders beyond the public administration to better design policies by broadening the evidence base.

- It recognises that the public administration does not hold the monopoly of expertise but that other stakeholders (citizens, civil society, private sector etc.) have valuable information and ought to express their needs and expertise.

- It emphasises the responsiveness of policies and services in actively involving those that will be affected by the policy; it is user-centred.
- It relies on an inclusive approach where all relevant actors are involved and attention is paid to marginalised, disadvantaged or less powerful groups.
- It can be conducted in different degrees and different modalities, ranging from providing information to consulting and to active engagement in the design, implementation and evaluation stage of a policy.
- It aims to modernise public administrations to be more efficient, effective, responsive and accountable in delivering public policies and services and embraces a new role for public governance by changing the model of expertise.

16. Open and inclusive policy making can:

- change the relationship between public officials and citizens, making it more dynamic and mutually beneficial;
- provide new inputs, innovative ideas and evidence about the problems as well as the solutions;

3. OECD (2009); OECD (2015d) and OECD (2016b).

4. OECD (2016b)

- ensure that policies and services address the real needs of stakeholders;
- strengthen trust, social cohesion and capital through its inclusive approach.

17. The *OECD Guiding Principles for Open and Inclusive Policy Making* emphasise that inclusion means not only that all stakeholders should have equal opportunities and multiple channels to access information, but also that they should be consulted. Getting the right advice through open and inclusive policy making builds upon two main ideas: openness (incl. responsiveness) and inclusion. **Openness** means providing stakeholders with information and making the policy process accessible, comprehensible and responsive. **Inclusion** means including as wide a variety of citizens' voices in the policy making process as possible (OECD, 2009).

Existing OECD Recommendation and Principles on stakeholder engagement

18. The 2012 *OECD Council Recommendation on Regulatory Policy and Governance* stipulates in principle No. 2 that countries should "Adhere to principles of open government, including transparency and participation in the regulatory process to ensure that regulation serves the public interest and is informed by the legitimate needs of those interested in and affected by regulation. This includes providing meaningful opportunities (including online) for the public to contribute to the process of preparing draft regulatory proposals and to the quality of the supporting analysis. Governments should ensure that regulations are comprehensible and clear and that parties can easily understand their rights and obligations." (OECD, 2012)

19. The OECD Report on *Open Government: the global context and the way forward* underlined that the involvement of citizens and civil society is crucial to develop, secure and implement open government reforms. Reformers inside and outside of government must build broad coalitions to achieve change. Evidence collected from more than 50 countries reveals that the role of citizens during the implementation and subsequent evaluation of policies remains limited. An overarching document on citizen participation, as available in half of OECD countries, would provide useful guidance to countries seeking to design policies which better correspond to the identified needs and suggestions by citizens (OECD, 2016).

20. The *OECD Best Practice Principles for Regulatory Policy: The Governance of Regulators* recognises that the knowledge of regulated sectors and the businesses and citizens affected by regulatory schemes help regulate more effectively. For this purpose, regulatory institutions should engage regularly with regulated entities as well as other stakeholders to discuss improving the operation and outcomes of the regulatory framework. The Principles also stress the importance of avoiding capture and conflicts of interest through engagement processes that guard against pressures from special interests.

21. In addition, the 2008 *OECD Guiding Principles for Regulatory Quality and Performance* stipulates that governments should "Consult with all significantly affected and potentially interested parties, whether domestic or foreign, where appropriate at the earliest possible stage while developing or reviewing regulations, ensuring that the consultation itself is timely and transparent, and that its scope is clearly understood." (OECD, 2008a)

22. The *APEC-OECD Integrated Checklist on Regulatory Reform* mentions the importance of transparency of the regulation-making process, the accessibility of regulations and the regulation-making process and its openness and inclusiveness. These ideas are shown in criteria A5, B4 and B5 of the checklist as well as D4. The criteria ask:

- Are there effective public consultation mechanisms and procedures including prior notification open to regulated parties and other stakeholders, non-governmental organisations, the private sector, advisory bodies, accreditation bodies, standards-development organisations and other governments?
- To what extent has the government established effective public consultation mechanisms and procedures (including prior notification, as appropriate) and do such mechanisms allow sufficient access for all interested parties, including foreign stakeholders?(OECD 2008b)

23. The Checklist also advises that “Regulators should be held accountable for the consultation and how comments are handled so that the credibility of the consultation process is maintained.”⁵

24. In addition to the work directly related to regulatory policy, OECD has produced a significant body of knowledge that focuses on strengthening government-citizen relations and stakeholder engagement in policy-making⁶.

Merits and challenges of stakeholder engagement in regulatory policy

25. Since regulation is seen as one of the fundamental powers of the state, stakeholder engagement is integral to all stages of the Regulatory Governance Cycle⁷. Stakeholders should not only be consulted when new regulation is being developed, they should actively participate in the subsequent processes arising from regulating. During governments' efforts to manage the stock of regulations, stakeholders should be engaged in the process of prioritisation as well as evaluation of individual regulations and/or regulated areas. Public institutions charged with enforcing and implementing regulations should be engaged with the regulated subjects and other interested parties to find the most effective and efficient ways of regulatory delivery. Effective and efficient regulatory delivery protects the public interest while not creating unnecessary regulatory burdens. Stakeholders should also be in the centre of monitoring and measuring performance of regulations and regulatory frameworks. Last but not least, stakeholders should also be engaged in shaping and evaluating the overall, cross-cutting regulatory policy itself.

26. Stakeholder engagement is not an alternative to established formal institutions and processes of representative democracy – such as parliamentary debate, elections or social dialogue. Instead, it is a very important complement to it, and may be extensively used as such.

27. Stakeholder engagement increases the information available to governments on which they base policy decisions. The use of other policy tools, particularly RIA, and the weighing of alternative policy tools, has made consultation increasingly needed for collecting and checking empirical information for analytical purposes, measuring expectations and identifying non-evident policy alternatives, including non-regulatory options when taking a policy decision.

28. Stakeholder engagement increases the level of transparency and it may help to improve regulatory quality by:

- Bringing into the policy discussion the expertise, perspectives, and ideas for alternative actions of those concerned;

5. By 'regulators' we hereby mean institutions and bodies responsible for developing, reviewing and implementing regulations at the executive level, e.g. ministries, departments, regulatory agencies

6. See e.g. OECD (2009), OECD (2016b).

7. For a description of the Regulatory Governance Cycle, see OECD (2011).

- Helping regulators to balance opposing interests and avoid regulatory capture;
- Identifying unintended effects and practical problems. Thanks to it, it is possible to foresee more easily the consequences of some planned policies;
- Providing a quality check on the regulators' assessment of costs and benefits;
- Identifying and facilitating interactions between regulations from various parts of government;
- Enhancing regulatory compliance.

29. Stakeholder engagement can enhance voluntary compliance⁸ for two reasons. First, stakeholders may adjust to changes more easily, because these changes are announced with sufficient time and opportunities for input to allow stakeholders to anticipate and overcome challenges in a timely manner. Second, stakeholder engagement engenders a sense of legitimacy and shared ownership that motivates affected parties to comply.

30. The 2015 *OECD Indicators of Regulatory Policy and Governance*⁹ show that virtually all OECD governments have embraced the principles of open government and civic participation in policy making. There is still some way to go, however, to change the culture of governance and many obstacles to overcome on the way to effective stakeholder engagement across the OECD member countries. Anecdotal evidence suggests that in some countries, a proportion of civil servants might still not see the value added and perceive stakeholder engagement only as an additional burden when drafting or reviewing regulations. The doubts on whether stakeholder engagement activities are actually meeting their goals continue to raise serious concerns and constitute a potentially limiting factor on their effectiveness (OECD, 2015a).

31. The 2016 OECD Report on Open Government moreover found that the majority of OECD countries (63%) noted a lack of or insufficient awareness of the benefits of open government reforms among public officials. According to the answers to an OECD Survey on Open Government, this was the most frequent answer provided to pinpoint challenges to implement open government initiatives, followed by general resistance to change or reforms in the public sector (54%) (OECD, 2016b).

32. At the sector level, similar challenges were acknowledged by OECD countries. The lack of or insufficient awareness among public officials of the value added of Citizen Participation in the Policy Cycle (CPPC) practices was mentioned as the second highest challenge to successfully implement CPPC initiatives in the ministries of finance (50%) and health (44%), coupled with the lack of financial and human resources.

33. Despite the wide recognition of the importance of stakeholder engagement, there are still many challenges connected with its application. The most important ones that are often mentioned include:

- The risks of stakeholder engagement activities being captured by organised interest and pressure groups;
- Difficulties in reaching out to some groups of stakeholders and wider society in general;

8. Lindt, A., Arndt, C., *Perceived Fairness and Regulatory Policy*, [GOV/RPC/MRP\(2016\)3](#)

9. www.oecd.org/gov/regulatory-policy/indicators-regulatory-policy-and-governance.htm

- Engaging stakeholders too late in the regulatory process, i.e. when the decision has been actually made and there is little will to change it, resulting in low public participation rates in the future,
- Engaging without a clear purpose, without defined scope, not acknowledging replies or not reflecting how stakeholder input has been considered in the final outcome risks resulting in ‘consultation fatigue.’
- Resource constraints both on the side of government institutions and those consulted.

34. At the same time, public officials sometimes face problems with getting useful input from the engagement activities. In some cases, they have to deal with large numbers of comments that are cumbersome to process. Furthermore, the representativeness of some organisations and associations that are vocal in the process but only represent a small number of affected stakeholders is often mentioned as an issue.

Draft Best Practice Principles for Stakeholder Engagement in Regulatory Policy

Governments should establish a clear policy identifying how open and balanced public consultation on the development of rules will take place. (OECD 2012, Principle 2.1)

35. **A clear, cross-cutting, government-wide guiding policy¹⁰ should exist on how to engage with stakeholders** when drafting, implementing and reviewing regulations. Such policy does not have to be a standalone document; it can be part of a more general policy on open government or of a regulatory policy. The policy should not and cannot be overly prescriptive, because additional tailored tools and instruments may be needed for different types of stakeholder engagement. **It should, however, provide for a sufficient level of transparency, predictability and uniformity** for the engagement process. The policy should therefore be a combination of obligatory measures (e.g. setting an obligation to enable public consultations on all developed regulations, compulsory notice and comment periods, etc.), and basic principles. Guidance on what kinds of tools are available and suitable for what kind of action should also be available. Depending on the legal system and administrative culture, the obligatory measures might take form of a law or a government decree (such as the Administrative Procedure Act in the USA - see Box 3).

36. **The policy should set clear objectives for stakeholder engagement.** These objectives should reflect the instrumental value of stakeholder engagement, i.e. strengthening the evidence base of policymaking by tapping a broader reservoir of ideas and resources¹¹. They should support reducing implementation costs by favouring compliance. They should also support intrinsic values, such as ensuring accountability, broadening the sphere in which societal actors can make and shape decisions, and building civic capacity and trust. Setting goals is important for *ex post* evaluation of stakeholder engagement activities and projects (see below). One of the main objectives of such policy should be to provide stakeholders with enough information in a sufficiently predictable, uniformly applied, and accountable process. Such a policy would encourage stakeholders to engage consistently and to provide the administration with the best information in return.

37. **Leadership and strong commitment to stakeholder engagement in regulation-making are needed at all levels, from politicians, senior managers and public officials.** For this, awareness must be raised among politicians and senior policy-makers of their role in promoting open, stakeholder-centred and accountable regulatory policy. Presenting examples of good practice from other countries, organising special events, and publicising successful initiatives is helpful.

38. **Capacities in public administration to conduct effective and efficient stakeholder engagement should receive adequate attention.** Civil servants should be systematically made aware of and trained in using stakeholder engagement techniques. All civil servants responsible for drafting or reviewing regulations should know of their obligations and duties regarding stakeholder engagement. They should also be trained in various techniques to gather input from stakeholders and to actively engage stakeholders in their work. Senior civil servants should be cognitive of the effects of stakeholder engagement on the quality of regulations and regulatory framework. Governments must balance their limited resources to efficiently deliver effective and meaningful stakeholder engagement.

39. **Governments should create mechanisms ensuring that civil servants adhere to the principles of open government and stakeholder engagement in regulatory policy,** including through effective oversight. Responsibilities for stakeholder engagement must be clearly assigned across the administration. In general, the institution responsible for drafting or reviewing regulations in their area of

10. The policy might also be set by a law.

11. See, e.g., Bourgon, J. (2007)

competence should also be responsible for engaging stakeholders in the drafting/review process. A degree of quality oversight, whether internal or independent, would strengthen these accountability mechanisms as well as potential judicial review in case of jurisdictions where the obligation to engage with stakeholders is set by law.

Box 3. US Public notice and comment system

The Administrative Procedure Act (APA) requires all US government agencies to provide public notice and seek comment prior to issuing new subordinate regulations or revising existing ones. The purpose of allowing public comment is to provide the agency with information that will increase its knowledge of the subject matter of the proposed rule, and to permit the public to challenge the factual assumptions, analyses and tentative conclusions underlying the proposed rule.

Agencies are required to publish a Notice of Proposed Rulemaking (NPRM) in the [Federal Register](#). The NPRM comprises the draft regulatory text, a summary of the issues and actions under consideration and the rationale for the rule. It also contains supplementary information, including a discussion of the merits of the proposed solution, important data and other information used to develop the action, and details its choices and reasoning. Before starting the consultation process based on the NPRM, agencies may publish an Advance Notice of Proposed Rulemaking (ANPRM). In the ANPRM, an agency describes the intended rulemaking and then requests the public to submit comments that would be used if the agency develops a draft proposal.

Stakeholders can comment on ANPRMs and NPRMs in various ways. In general, the comment period ranges between 30 and 60 days and all “interested persons”, regardless of domicile, may participate. Many agencies give several options for submitting comments, including U.S. mail, private courier, email, and electronic submissions on the website [Regulations.gov](#). In addition, an agency may hold public hearings during the comment period, where people can make statements and submit data. Sometimes, webcasts and interactive internet sessions are also used to provide information to the public on the substance of the proposed rule.

The government portal [Regulations.gov](#) supports the public notice and comment process and provides access to all publicly available regulatory materials, e.g. final rules and supporting analyses, as well as ANPRMs and NPRMs. Stakeholders can directly provide electronic comments on regulations through the portal. More than 5 million documents are posted on [Regulations.gov](#), 80% of which are public submissions. Nearly half a million comments are submitted through [Regulations.gov](#) each year by nearly 4 million annual visitors.

Changes are frequently made to proposed rules in response to public comments. On the basis of information and comments received, agencies may decide to proceed to a final rule if changes to the proposed rule on the basis of comments received are minor, revise the proposed rule and publish an updated proposed rule for comment, or terminate the rulemaking. Following the consultation process based on the NPRM, final regulations are published in the [Federal Register](#), and become effective usually 30 to 60 days after the publication date. The final rule includes the final regulatory text, as well as a summary of significant issues raised by commenters and an explanation of how the agency addressed those public comments, the objectives and rationale for the regulation, and relevant facts and data the agency relied on. Together with the proposal and supporting analyses, the comments comprise the public record that serves as the rational basis for each final regulation. The APA also allows for judicial review of the final rule to ensure compliance with this process.

Source: OECD Pilot database on stakeholder engagement practices in regulatory policy. <http://www.oecd.org/gov/regulatory-policy/pilot-database-on-stakeholder-engagement-practices.htm>

40. **For successful stakeholder engagement actions, governments need to plan and act strategically. Sufficient time for stakeholder engagement activities must be planned beforehand.** An insufficient amount of time may result in rushed consultations that only tick the box and fulfil the obligation without any actual impact on the quality of regulations. Careful planning of how and when stakeholders will be engaged beforehand in the process helps to identify the stages of the project when stakeholders' input will be required and, therefore, allows governments to choose the right tools that for the different stages of developing regulatory proposals. A regulatory policy should also provide for regulators to extend the consultation process before it starts based on justified requests of stakeholders, if circumstances permit.

41. Given that stakeholder engagement might be resource-intensive, **governments should dedicate sufficient financial resources to stakeholder engagement activities.** The engagement policy should also stipulate priorities for where scarce resources should be invested.

Mechanisms and institutions to actively provide oversight of regulatory policy procedures and goals, support and implement regulatory policy should be established. (OECD 2012, Principle No. 3)

42. **Control and oversight of the quality of engagement activities and compliance with the engagement policy should exist within all administrations.** As shown by the example of the dedicated government units or the so-called 'independent watchdogs'¹², quality oversight carried out by a body that is independent from the one (e.g. ministry, department or an agency) drafting the regulation can increase the quality of impact assessments. The same might be applied to stakeholder engagement. Oversight may come through specialised units in the centre of government, established procedures (e.g. parliamentary review, judicial review) or through dedicated bodies, such as Ombudsman or the independent watchdogs. In those cases where an independent body already oversees the quality of impact assessments, it should also evaluate the quality of public consultations conducted as part of impact assessment.

43. The engagement policy should also assign **clear competences for promoting and co-ordinating stakeholder engagement in regulatory policy across the administration.** The body with such competence does not have to be responsible solely for the issue of stakeholder engagement; the body co-ordinating regulatory policy (such as COFEMER in Mexico) or a body responsible for the open government policy might play this role as well. This body should be responsible for promoting stakeholder engagement, issuing guidance, provide advice to line ministries and other agencies, organise trainings, etc. The existence of such body would enhance knowledge management, ensure policy coherence, and avoid duplications. Examples of good but also 'bad' practice should be shared across the administration to support the learning process. The responsible body could also be responsible for the central consultations portal (see below).

Governments should co-operate with stakeholders on reviewing existing and developing new regulations (OECD 2012, Principle 2.2)

44. While the Recommendation explicitly mentions only "*reviewing existing and developing new regulations*", **it is important that the engagement policy covers stakeholder engagement at each stage of the Regulatory Governance Cycle.** It is crucial to involve stakeholders when drafting new or amending the existing regulations. It is nonetheless important to closely collaborate with stakeholders in reviewing existing regulations (see the example of the UK Red Tape Challenge - Box 20 or the Korean Sinmungo e-petition System - Box 8). Last but not least, this cooperation should also exist downstream to the phase of implementing and enforcing regulations (for example, the UK Regulatory Delivery is responsible for "ensuring the concerns of business are heard and influence policy", "working with stakeholders to achieve the right policy outcomes in simpler, cheaper and better ways" and "helping businesses and regulators work together to solve local issues"¹³). One of the examples of engaging stakeholders in different stages of the policy cycle is the case of the European Commission (Box 4). Regulators might also seek an advice of stakeholders when assessing their performance.

Box 4. Stakeholder engagement throughout the policy cycle at the European Commission

Following the adoption of the [2015 Better Regulation Guidelines](#), the European Commission has extended its range of consultation methods to enable stakeholders to express their view over the entire lifecycle of a policy. It uses a range of different tools to engage with stakeholders at different points in the policy process. Feedback and consultation input is taken into account by the Commission when further developing the legislative proposal or

12. In some countries where such institutions have been established

13. www.gov.uk/government/organisations/regulatory-delivery/about

delegated/implementing act, and when evaluating existing regulation.

At the initial stage of policy development, the public has the possibility to provide feedback on the Commission's policy plans through roadmaps and inception impact assessments (IIA), including data and information they may possess on all aspects of the intended initiative and impact assessment. Feedback is taken into account by the Commission services when further developing the policy proposal. The feedback period for roadmaps and IIAs is four weeks.

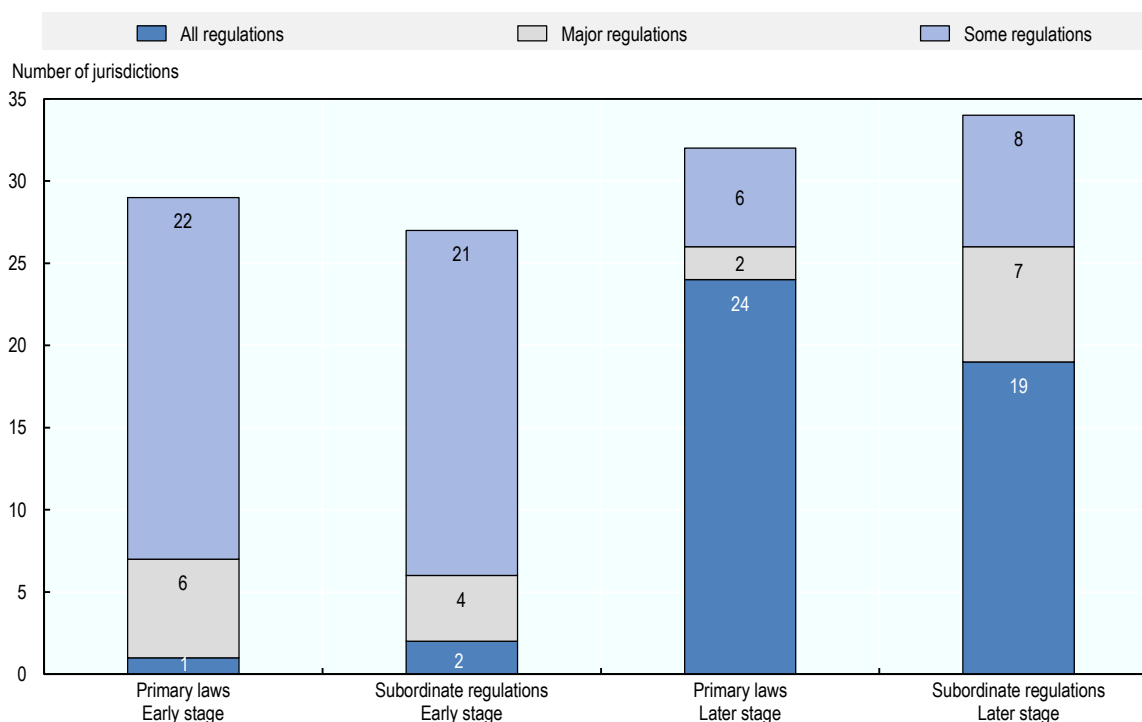
As a second step, a consultation strategy is prepared setting out consultation objectives, targeted stakeholders and the consultation activities for each initiative. For most major policy initiatives, a 12 week public consultation is conducted through the website "Your voice in Europe" and may be accompanied by other consultation methods. The consultation activities allow stakeholders to express their views on key aspects of the proposal and main elements of the impact assessment under preparation.

Stakeholders can provide feedback to the Commission on its proposals and their accompanying final impact assessments once they are adopted by the College. Stakeholder feedback is presented to the European Parliament and Council and aims to feed into the further legislative process. The consultation period for adopted proposals is 8 weeks. Draft delegated acts and important implementing acts are also published for stakeholder feedback on the European Commission's website for a period of 4 weeks. At the end of the consultation work, an overall synopsis report should be drawn up covering the results of the different consultation activities that took place.

Finally, the Commission also consults stakeholders as part of the *ex post* evaluation of existing EU regulation. This includes feedback on evaluation roadmaps for the review of existing initiatives, and public consultations on evaluations of individual regulations and 'fitness checks' (i.e. "comprehensive policy evaluations assessing whether the regulatory framework for a policy sector is fit for purpose"). In addition, stakeholders can provide their views on existing EU regulation at any time on the website "[Lighten the load – Have your say](#)".

Source: OECD Pilot database on stakeholder engagement practices in regulatory policy. <http://www.oecd.org/gov/regulatory-policy/pilot-database-on-stakeholder-engagement-practices.htm>

45. As elaborated by the OECD (OECD, 2001b; 2009), stakeholder engagement can be understood as involving three processes. These entail information/notification, consultation and participation. The engagement policy should describe which tools are suitable depending on the form of interaction. In practice, these three forms of interaction are often complementing and overlapping each other. Ideally, stakeholder engagement mechanisms should comprise elements of all three. Consultations on draft regulations are the most common way of interaction with stakeholders among OECD countries and tend to take place rather at a later stage in the rulemaking process (see Figure 1). Usually, they involve publishing draft legal texts and accompanying material (usually through electronic means) with a request for submitting inputs. When carried out at an earlier stage of the regulatory preparation process, consultations are often based on other types of consultation documents (e.g. questionnaires, issues papers, etc.). Consultations are always necessary but stakeholders participation in more interactive contexts better captures and allows stakeholders' to share broader perspectives and reflects more the increasing demands of stakeholders to influence the policy-making process at an earlier stage, or when assessing how well a regulation has performed. Closer engagement with stakeholders is beneficial especially in the early stages of the regulation-making process, but also when reviewing or evaluating existing regulations (example of the Danish Business Forum for Better Regulation – Box 4, public inquiries of the Australian Productivity Commission – Box 7) and in implementing and enforcing regulations (e.g. the example of Focus on Enforcement – Box 6).

Figure 1. Early stage and later stage consultations on regulatory drafts

Source: OECD Indicators of Regulatory Policy and Governance (*iREG*), <http://www.oecd.org/gov/regulatory-policy/indicators-regulatory-policy-and-governance.htm>.

Box 5. Denmark's Business Forum for Better Regulation

The Business Forum for Better Regulation was launched by the Danish Minister for Business and Growth in 2012. It aims to ensure the renewal of business regulation in close dialogue with the business community by identifying those areas that businesses perceive as the most burdensome, and propose simplification measures. These could include changing rules, introducing new processes or shortening processing times. Besides administrative burdens, the Forum's definition of burdens also includes compliance costs in a broader sense as well as adaptation costs ("one-off" costs related to adapting to new and changed regulation).

Members of the Business Forum include industry and labour organisations, businesses, as well as experts with expertise in simplification. Members are invited by the Ministry for Business and Growth either in their personal capacity or as a representative of an organisation. The Business Forum meets three times a year to decide which proposals to send to the government. So far, the proposals covered 13 themes, ranging from 'The employment of foreign workers' to 'Barriers for growth'. Interested parties can furthermore submit proposals for potential simplifications through the Business Forum's [website](#). Information on meetings and the resulting initiatives is published online.

Proposals from the Business Forum are subject to a "comply or explain" principle. This means that the government is committed to either implement the proposed initiatives or to justify why initiatives are not implemented. As of October 2016, 603 proposals were sent to Government, of which so far 191 were fully and 189 partially implemented. The cumulated annual burden reduction of some initiatives has been estimated at 790 million Danish crowns. Information on the progress of the implementation of all proposals is available through a dedicated [website](#). The results are updated three times a year on www.enklerleger.dk. The Business Forum publishes [annual reports](#) on its activities. The Danish Minister for Business and Growth also sends [annual reports on the activities of the Business Forum to the Danish parliament](#).

Source: OECD Pilot database on stakeholder engagement practices in regulatory policy. <http://www.oecd.org/gov/regulatory->

policy/pilot-database-on-stakeholder-engagement-practices.htm; www.enklereregler.dk.

Box 6. United Kingdom: Focus on Enforcement Initiative

Between 2012 and 2015, the [Focus on Enforcement Initiative](#) reviewed the regulatory enforcement and inspection regimes in various sectors of the economy. The reviews looked at the impact on the regulated of how regulations are implemented and enforced by national regulators and local authorities with a view to identifying opportunities for improvements.

The following sectors and policy areas were reviewed: adult and child care, chemicals, the classification of electronics exports, coastal projects and investments, fire safety, livestock farm inspections, imports of fresh produce, pharmaceutical manufacturing, pubs, regulatory appeals mechanisms, small businesses in food manufacturing, and volunteer events.

While a majority of ten reviews were conducted by the government, three reviews were led by industry organisations as part of the *Business Focus on Enforcement Initiative*. Business groups and trade associations had the opportunity to apply for a government mandate to conduct reviews of their own sectors and present their findings to relevant regulators and ministers.

For each review, stakeholders of the respective sector under examination were asked to provide their views and inputs to the review process through various engagement methods. Based on the inputs received, key issues and areas for reform were identified in summary reports. The responsible ministries and/or regulatory agencies in charge of regulatory enforcement in the sector under review subsequently released an official response to the report, and implemented a number of reforms based on the issues and problems identified.

The Focus on Enforcement reviews have led to various reforms in the sectors and policy areas under review. Reforms include revisions to inspection and audit processes to make them less time- and resource-intensive, the revision of guidance documents to render them more concise and user-friendly, and the introduction of online tools to comply with regulation as well as specialist training for inspectors.

Source: OECD Pilot database on stakeholder engagement practices in regulatory policy. <http://www.oecd.org/gov/regulatory-policy/pilot-database-on-stakeholder-engagement-practices.htm>

46. Stakeholder engagement should be proportionate to the significance and impact of regulations being discussed. Engaging stakeholders can be a costly and time-consuming exercise and therefore resources must be used wisely. Engagement programmes must be flexible enough to be used in very different circumstances, but operate within a framework of minimum standards, in order to provide consistency and confidence. Regulatory issues differ greatly in impact and importance, scope and number of affected groups, information needs, timing of government action and resources available for consultation. Within the framework of a consistent government-wide consultation policy, regulators should be able to design a consultation process to suit particular circumstances.

47. Within the government framework, flexibility should be maintained so that the effective breadth of consultation can be maximised. Mapping of stakeholders in the early stages of the engagement process including evaluation of their capacities to provide input might be helpful. Where potentially important stakeholders are known to be harder to reach or less able to participate, specific measures may be required to actively seek and ensure their input. This could include the extension of time limits, more intensive information provision, further iterations of consultations, communicating in local languages or the provision of specifically tailored opportunities for dialogue. Similarly, the need to depart from a standard process may arise because of the nature of the issue being regulated. Considerations could include the need to prevent opportunities for strategic behaviour and requirements to meet inter-jurisdictional obligations and agreements. Any additional steps should supplement the minimum process, while departures from it should be subject to clear guidelines and controls. Moves to create flexibility must always be weighed in terms of the implicit trade-off that often exists between flexibility and accessibility.

48. Another reason for flexibility is that engagement programmes should include a range of strategies, including formal and informal approaches, earlier and later approaches, and approaches offering wide access to affected groups as well as focused fact-finding among experts. These approaches can be combined into an iterative process as needed to suit the regulatory issue under discussion. The increasing use of multi-staged consultation calls for sophisticated choices among the different consultation tools available. Choices must be based on a clear understanding of the characteristics, strengths and weaknesses of each tool in meeting the goals sought at each stage.

49. While administrations should be flexible in what kind of engagement tools they are using and in which phases of the engagement process, **there should nevertheless be full transparency and predictability and a certain level of uniformity of the process.** While in some phases of the process administrations might find it more useful to organise consultations only with a limited range of stakeholders, **there should always exist an opportunity¹⁴ for every stakeholder to express their opinions and provide inputs.** The notice and comment (see Box 3) procedure provides an example. To be useful, the stakeholder engagement has to take place at the stage of the regulation-making process when there is still sufficient time for the comments to be taken on board. In case of each developed regulation regardless of whether any other forms of engagement have taken place before, a notice and comment (or similar) procedure has to take place. Stakeholders should know that there are certain procedures which every regulatory project has to go through, where all stakeholders have an opportunity to get involved. At the same time, all consultations with individual stakeholders or with a limited scope of stakeholders should be recorded and their outcomes described in the consultation summary.

50. The use of consistent approaches across different policy areas enhances the quality of the process in three ways. First, minimum standards provide clear benchmarks to all parties as to whether consultation has been properly undertaken, and therefore protects all interests. It provides clear guidance for regulatory policy-makers. Where a single, widely understood set of procedures is employed, dissatisfied parties – particularly those less organised – can identify procedural problems. In turn, this enhances confidence in the consultation process, and means that it is likely to be better balanced, in terms of the range of interests participating, and less prone to capture by small, highly organised groups with major interests in the outcome. Adopting a consistent process also permits better co-ordination of regulatory quality initiatives across a wide range of policy areas. Allowing individual ministries significant discretion could endanger this, either because of a lack of understanding of the requirements of a good consultation process or because of a degree of “capture” of the ministry by specific interests. A consistent process is thus a key quality control mechanism.¹⁵

Box 7. Public inquiries of the Australian Productivity Commission

The Australian Productivity Commission conducts public inquiries at the request of the Australian government on key policy or regulatory issues bearing on Australia's economic performance and community wellbeing. The Commission acts as the Government's independent research and advisory body on a range of economic, social and environmental issues. Its activities cover all levels of government and encompass all sectors of the economy. In its public inquiries, the Commission is often required to provide the Government with policy options representing alternative means of addressing the issues, as well as a preferred option.

Public inquiries usually involve two stages of consultation. Input from interested parties and the general public is sought at an initial stage on an issues paper to focus attention on the matters it considers relevant, as well as at a later stage on a draft report. Interested parties can generally provide written submissions to the Productivity Commission at both stages. In addition, public

14. Exceptions might exist in case of confidential documents or regulatory decisions with extremely minor impacts or very limited margin for manoeuvre (e.g. implementation of international agreements).

15. The Commission's Better Regulation Guidelines and Better Regulation Toolbox could serve as an example. See https://ec.europa.eu/commission/priorities/democratic-change/better-regulation_en.

hearings and other consultative forums are held to give interested parties the opportunity to provide feedback and input to the Commission's inquiries. For a 12 month inquiry, the usual period for submissions is 6 to 8 weeks following the release of the issues paper, and 4 to 6 weeks following the publication of the draft report.

The draft and final report provide a feedback mechanism to interested parties. A full list of submissions, groups and individuals consulted and appearances at hearings is provided in appendixes to the reports. Submissions are also often quoted to illustrate specific points in the analysis. In addition, all public submissions as well as transcripts of public hearings are available on the Commission's website.

Inquiry reports are publicly available and brought to the attention of Government and Parliament. Final reports, including documentation on the analysis and public consultation as well as research findings and policy recommendations, are tabled in the Australian Parliament, and are publicly available to the wider community. While governments are not obliged to follow the Commission's advice and decide independently on how to react to the Commission's recommendations, Commission recommendations are often accepted. Government frequently publishes an official response to Productivity Commission reports, outlining if and how it intends to address the Commission's recommendations.

Source: OECD Pilot database on stakeholder engagement practices in regulatory policy. <http://www.oecd.org/gov/regulatory-policy/pilot-database-on-stakeholder-engagement-practices.htm>

Governments should actively engage all relevant stakeholders during the regulation-making process and designing consultation processes... (OECD 2012, Principle 2.2a)

51. **Governments should try to reach out to those who are usually least represented in the rule-making process.** Publishing information on the Internet and hoping that all stakeholders will find it might not be sufficient. There is always a risk of regulatory capture of the engagement process by those who have enough resources to influence the process and time they can dedicate to look for ongoing consultations that might affect them. Administrations should put in place procedures and disciplines to prevent or limit the risk of regulatory capture. The administration must try to go beyond the "usual suspects" and proactively search for an opinion of those who are either "able but unwilling" or "willing but unable" to participate in the public debate and make every possible effort to remove any obstacles for their participation. Careful mapping of different groups of stakeholders early in the engagement process might be helpful in analysing the ability and willingness of various groups of stakeholders to contribute. The European Commission's *Better Regulation "Toolbox"* provides some guidance on deciding the appropriate consultation methods and tools for various types of stakeholders (p. 313). The *APEC-OECD Integrated Checklist on Regulatory Reform* states that "consultation should not be limited to insiders, such as already established businesses, but should be open to all interested parties....Wide discretion on who is to be consulted and how on given regulatory proposals may dilute the intended benefits of broad based consultation. In particular, new entrants, SMEs or foreign stakeholders may be at a disadvantage in informal consultations."

52. **Potentially affected foreign interests should not be excluded from the engagement process and should have an opportunity to provide their views and arguments as well as data supporting those views.** According to the *OECD Guiding Principles for Regulatory Quality and Performance*, all significantly affected and potentially interested parties should be consulted, "whether domestic or foreign". The *APEC-OECD Integrated Checklist on Regulatory Reform* and the *OECD market openness principles* also support consultations with both domestic and foreign subjects. It is necessary that foreign-based stakeholders are given notice sufficiently in advance and are also given a sufficient period of time to submit their inputs. It might be useful in cases when regulations have impacts on foreign parties to translate these regulations (e.g., in the Estonian official online Gazette all primary laws are translated into English and some into Russian; the Korean Sinmungo e-petition System (Box 8) has an English web version to facilitate access to non-Korean speaking interested parties).

Box 8. Korea Regulatory Reform – Regulatory Reform Sinmungo e-petition System

In 2014, the Korean government introduced a new regulatory petition system on the dedicated regulatory information portal www.better.go.kr, called "Regulatory Reform Sinmungo". Any member of the public can submit a

suggestion for regulatory reform through the Regulatory Reform Sinmungo website. Regulatory Reform Sinmungo also provides other methods for filing a petition, such as mail, fax or personal visits.

The petition procedure consists of three steps. First, the petitioner requests the improvement in regulations and the competent agency reviews and responds to it within 14 days. Unaccepted petitions are sent to the Prime Minister's Office, which checks if the agency's response is reasonable. If a response is found to be unreasonable, the concerned administrative agency is required by the Prime Minister's Office to conduct a second review of the petition within 3 months. If the second response by the agency is still found to be unreasonable, the petition is brought to the Regulatory Reform Committee (RRC), which is responsible for setting regulatory policy and monitoring the regulatory reform process in Korea. The Committee issues a recommendation for regulatory revisions to the agency, if it deems this necessary.

Since its introduction in March 2014, the Regulatory Reform Sinmungo has accepted 3,645 petitions out of 9,333. All accepted petitions need to be implemented within six months in case of acts enacted by the Korean National Assembly, or within three months in case of rules and regulations enacted by ministries. Resulting policy changes from petitions can be browsed online grouped by policy field.

The performance of the Regulatory Reform Sinmungo is monitored by the Korean government. Each administrative agency receives an annual evaluation from the Office for Government Policy Coordination on its performance in the Regulatory Reform Sinmungo. Evaluation criteria include the rate of compliance with response deadlines, the acceptance rate of petitions and the level of reform efforts. Their performance is reflected in each agency's annual assessment of regulatory reform performance, which is made available to the public. In addition, the Regulatory Reform Sinmungo commissions annual satisfaction surveys of petitioners and the general public. Results from the satisfaction surveys show that people's satisfaction with regulatory reform via Regulatory Reform Sinmungo has increased over time.

Source: OECD Pilot database on stakeholder engagement practices in regulatory policy. <http://www.oecd.org/gov/regulatory-policy/pilot-database-on-stakeholder-engagement-practices.htm>

53. Many OECD countries have established formal processes for consultations with social partners – elected representatives of employers and employees (see, for example, Box 8 - the South Africa's National Economic Development and Labour Council). Usually these consultations are tripartite – between governments, employers, and workers – in the formulation of standards and policies dealing with labour, social or economic matters. Such consultations are important for ensuring that the interests of workers and businesses are taken into account in the policy-making process. However, these consultations may in some cases take place relatively late in the process. It should be the standard practice that the employers' and employees' representatives are consulted early in the regulation-making process, even outside the formal tripartite consultations. At the same time, tripartite consultations should not be a substitute for broader based consultations.

Box 9. South Africa's National Economic Development and Labour Council (NEDLAC)

NEDLAC is a representative and consensus-seeking statutory body that aims to facilitate sustainable economic growth, greater social equity at the workplace and in the communities, and to increase participation by all major stakeholders in economic decision-making. It consists of representatives from government, organised labour, organised business and community organisations. They seek to cooperate, through problem-solving and negotiation, on economic, labour and development issues, and related challenges facing the country. The Council considers all proposed labour legislation before it is introduced into Parliament as well as all significant changes to social and economic policy before it is implemented or, in the case of legislation, before it is introduced into Parliament.

Policy proposals or legislation for consideration by NEDLAC are tabled by Government. Labour, business or the community constituency can also table issues. Issues are tabled in front of one of the four NEDLAC Chambers (the Development Chamber, the Labour Market Chamber, the Public Finance and Monetary Policy Chamber, and the Trade and Industry Chamber) or a specialised committee for negotiation or consultation. An equal number of representatives from organised business, organised labour and the State form each of the four chambers. Representatives of community and development interests are only represented in the

Development Chamber.

NEDLAC conducts an engagement process on the issue tabled with its members and prepares a report. The report outlines areas of agreement and disagreement between NEDLAC representatives on key issues covered in the legislation. All relevant reports of the Council, including the annual reports or reports on any proposed legislation or policy relating to or affecting social and economic matters, are submitted to the relevant Ministers. NEDLAC subsequently submits the reports to the National Council of Provinces and the National Assembly. NEDLAC is given the opportunity to brief relevant parliamentary Portfolio Committees on NEDLAC reports on an annual basis.

Through the NEDLAC engagement on legislation, government departments take account of comment and amend legislation accordingly. Since its inception, the different NEDLAC Chambers have been consulted on a wide range of draft legislation (e.g. Acts, Bills, Codes of Good Practice), including in the areas of labour relations, social policy, education, health, trade and environment. The consultation process always leads to changes in the legislation. The scope and depth of changes made as a result of the consultation process may vary.

Source: OECD Pilot database on stakeholder engagement practices in regulatory policy. <http://www.oecd.org/gov/regulatory-policy/pilot-database-on-stakeholder-engagement-practices.htm>

54. Similarly, some OECD countries have a well-established and well-supported practice of consulting external shareholders based on institutionalised bodies (“advisory boards”). These bodies might have either a permanent or an *ad hoc* nature. Advantages inherent to the system include the fact that consulted stakeholders are targeted in terms of their representativeness and expertise, and that they are integrated in an “interactive” discussion with the government. If there is insufficient expertise in-house, it might be useful to use input from experts, notably scientists and academics active in the field. Their input might be especially valuable so as to ensure that the best available evidence is used to support decision-making throughout the cycle. A potential disadvantage of this approach lies in the fact that it might become more difficult for 'outsiders' and 'newcomers' to become part of the engagement process. The risk of regulatory capture is also significantly higher when consultations are not open to all stakeholders. **Governments should avoid overreliance on consulting advisory bodies or expert groups.** They should always be used as a complement, not a substitute for broad based consultations. Procedures for establishing advisory boards and nominating their members therefore need to be fully transparent and accessible. The membership of advisory boards should be periodically reviewed to assess the quality of feedback received from such boards to identify if members of such boards suffer from inherent biases. This provides an opportunity for outsiders who have not been previously involved to put themselves forward for nomination if they so wish. The results of the discussions with such bodies must also be transparently accessible to avoid any assumptions of regulatory capture (see for example Boxes 4 and 10).

Box 10. Example of advisory bodies in Belgium

In Belgium, advisory boards and their conditions of work, including rules for the designation of committee members, work scope, consultation process, publicity given to the committee’s recommendations, assessment of results, and procedures for taking account of the recommendations are set up by specific regulations. While missions and specific rules can differ, the organisation of advisory boards at federal, regional or community levels are based on a number of common principles:

- Composition reflects the different types of target stakeholder for policy areas. The regulation creating the board usually sets the number of members for each defined target stakeholder. They are usually proposed by defined institutions and nominated by the government.
- The scope of activity is defined.
- Regulations setting up an advisory board and complementary regulations specify the rules regarding deadlines for giving comments, publicising comments, secretariat capacities, etc. These rules can thus vary

across boards.

All advisory boards have a general mission to enlighten administrative and political authorities and associate all relevant stakeholders with the decision-making process. Beyond this, their specific missions may vary. Advisory boards can be asked to provide comments and suggestions in the development of specific new regulations, in the implementation of regulations (e.g. issuing advice on delivery of specific authorisations), and in the development of broader policies. These differences can be reflected in their composition. They can take the shape of technical or expert committees, socio-economic committees (reflecting different target groups) and inter-federal co-ordination committees (through the representation of region and community organisations). Some advisory boards combine these three different missions.

Advisory boards are consulted either before or after the first reading of a text in the Council of Ministers (after in the case of the Walloon government). The results of the consultation process are used in different ways by Belgian governments. At the federal level, the note attached to the text sent to the Council of Ministers must include the opinions of the advisory bodies (summary and full text) and the list of bodies still to be consulted. The government is not, however, required to attach these when it sends the proposal to the federal parliament. In Flanders, the decree related to strategic advisory boards stipulates that the Flemish government “gives a reason and an explanation for its decision on advisory opinions to the strategic advisory board”. The opinion of the strategic advisory board is appended to the draft sent to the Flemish parliament, while the feedback on the opinion is sent only to the strategic advisory council. In Wallonia law drafters are encouraged to report on opinions received during the consultation process in the note to the Walloon government so as to provide feedback to consulted stakeholders.

Formal requirements regarding consultation of advisory boards mainly apply to primary regulations (laws, decrees and ordinances) and to some secondary regulations. For example, the government of Flanders must consult the strategic advisory board on all draft primary regulations (decrees) as well as secondary regulations of “strategic relevance”. The strategic advisory boards can take the initiative of giving advice on draft decrees initiated by the Flemish parliament or draft secondary regulations issued by the Flemish government. Advisory boards can also be associated with the development of large scale reforms as was the case of the National Council of Labour in the programme for the modernisation of social security.

Source: OECD (2010), *Better Regulation in Europe: Belgium 2010*, OECD Publishing, Paris, <http://dx.doi.org/10.1787/9789264087859-en>.

... to maximise the quality of the information received...(OECD 2012, Principle 2.2a)

55. Administrations have to provide stakeholders with the most relevant and timely information available concerning the proposal under consideration. In case of consultations on a regulatory draft, this includes all the background analyses, expert papers, description of the problem, the impact assessment studies, etc. In case of stakeholder engagement in an earlier stage of the regulation-making process, the information should include available background analyses of the current state in the regulatory area, description of the problem and information on why the government sees a need to act and, if available, information on possible alternative solutions. This information should be presented, as much as possible, in a language that is understandable to non-experts in the field. Administrations might find it useful to identify specific questions for the consulted parties to guide the consultation process. Ministries and agencies should, wherever possible, follow an open data policy wherein all data relied upon to make regulatory decisions must be easily and freely available in public domain.

56. Governments have to provide stakeholders with sufficient time to submit their views. Clear timelines must be set and publicised for stakeholder engagement activities, especially for public consultations (notice and comment). Stakeholder engagement is a resource-intensive exercise not only for the administration but also for stakeholders. Stakeholders must be informed sufficiently in advance on ongoing engagement activities they might get involved in and there must be enough time to get involved. Some NGOs, business associations or trade unions have to contact their members and then sometimes synthesise their inputs which makes the process even longer, especially in case of international

organisations and associations. While the Principles do not recommend any minimum comment period, many countries require or recommend minimum periods of 30 or 60 days (or longer, when the regulatory proposal is particularly complex). A sufficient minimum consultation period should be set centrally by the stakeholder engagement policy.

57. It is important to choose consultation tools that are suitable for the types of stakeholder engagement and for the right phase of the policy process. Selecting tools is an important step in planning stakeholder engagement activities. Selecting tools depends on i) objectives of the project, ii) stakeholders participating and iii) available resources (the European Commission's *Better Regulation "Toolbox"*, Chapter 7.5, provides an overview of consultation methods and tools for various types of stakeholders). When matching tools with objectives, stakeholders and available resources, government officials may find that one tool is not enough to create the necessary level of contact with stakeholders and reach their objectives. Usually, a mix of tools is necessary (see for example the French Grenelle Environment Forum – Box 11). Such a mix may also give governments a chance to use their efforts in several ways in order to reach stakeholders better and achieve objectives. It is also important that culturally appropriate tools are chosen when engaging with, for example, indigenous groups. Integrating tools is of special importance when using new information and communication technologies (ICT). Integrating traditional and ICT tools can help to boost effectiveness while overcoming many limits of ICT (Example of Estonian online tools for engaging with stakeholders - Box 13).

58. At the same time, wide discretion on who is to be consulted and how on given regulatory proposals may dilute the intended benefits of broad based consultation. In particular, new entrants, SMEs or foreign stakeholders may be at a disadvantage in informal consultations. Maintaining balance between open consultation procedures and the flexibility of informal procedures is important.

Box 11. Grenelle Environment Forum France

The Grenelle Environment Forum consultation process was conducted by the French government between 2007 and 2012. It brought together the central government and representatives of civil society in order to draw up a road map for ecology and sustainable development and establish an action plan of concrete and quantifiable measures that would meet with the broadest possible agreement among participants.

Policy measures were identified through an extensive consultation process following a “five-stakeholder governance” approach. Between July and September 2007, five collegial bodies were set up, made up of trade unions, employers, non-governmental organisations, local authorities and public service representatives respectively. Members of these bodies formed six working groups, dealing with climate change, biodiversity, environment and health, sustainable production and consumption, environmental democracy, and environmental growth and economic instruments. Each working group identified operational proposals to respond to current problems and issues, indicated impediments of any possible kind facing its implementation, as well as the resources needed to eliminate them. Between September and October 2007, a wide-ranging consultation process based on the proposals of these working groups took place through an internet platform open to the public at large, through public meetings held mainly in the regions of France, and with Parliament. On 24-26 October 2007, four final roundtables of negotiations were held between representatives of the five collegial bodies. As a result, the President of the Republic announced 268 commitments to be implemented in a variety of fields. Official documentation on the work of the working groups, public meetings, the list of 268 commitments resulting from the consultation process and reports on the implementation of the measures adopted are available [online](#).

The Grenelle Environment Forum resulted in a number of policy changes. The French government set up 34 committees as well as a great number of additional working groups charged with drawing up concrete measures designed to ensure that the commitments announced were met. Two bills for environmental programming were passed by parliament in 2009 and 2010 to implement the measures. In total, almost 450 legal provisions and about 70 tax provisions were adopted following the Grenelle Environment Forum. In 2012, decrees of implementation for 86% of the Grenelle measures were published.

The Grenelle Environment Forum has also led to some institutional reforms. The Economic and Social Council (Conseil Économique et Social (CES)) was reformed in 2010 to become the French Economic, Social and Environmental Council (Conseil Économique, Social et Environnemental (CESE)). The CESE is a constitutional consultative assembly promoting cooperation between different socio-professional interest groups and ensuring they are part of the process of shaping and reviewing public policy. The Council consists of members representing interests of economic matters and social dialogue, social and territorial cohesion and community life, and environmental and nature conservation. Furthermore, the National Council of Ecological Transition (Conseil national de la transition écologique (CNTE)) was founded in 2012 as a follow-up from the Grenelle process. The Council is consulted

on legislative drafts related to environmental matters, provides opinions on environmental policies and may comment on any matter relating to ecological transition and sustainable environment. It is composed of representatives from national and subnational government, trade unions, employers, environmental NGOs, civil society and members of parliament, including the President of CESE.

A [number of evaluations](#) of the Grenelle Environment Forum have been conducted by the government as well as external actors. Overall, the evaluations draw positive conclusions regarding the impact of the Grenelle Environment Forum, as most commitments have been implemented in practice and led to policy changes promoting sustainable development in France. While the Grenelle process was a multi-stakeholder consultation which led to the implementation of a range of concrete policy measures, a 2007 government report on the Grenelle Environment Forum noted that the level of participation by women in the debates was very low. More generally, no clear rules had been established to ensure maximum diversity among participants. According to the French government, the lacking diversity of public participation has been addressed through the work of a [working group](#) established as a result of the Grenelle process, which included various initiatives to raise awareness and educate the general public on environmental issues and sustainable development.

Source: OECD Pilot database on stakeholder engagement practices in regulatory policy. <http://www.oecd.org/gov/regulatory-policy/pilot-database-on-stakeholder-engagement-practices.htm>

59. An overview of available tools should be provided by the government to ministries and agencies. Guidance issued by the government should serve as a shopping list to help officials to choose the right tools for the right objectives, stakeholders and resources. An overview of available tools as well as when it is suitable to use them is provided in OECD (2001), pages 49 - 66.

60. The most efficient way of enabling access to this kind of information is to publish it electronically. **Central consultation portals should be created** to enable access to all ongoing consultations at one place. These portals should be as user-friendly as possible, enable sorting ongoing projects according to the regulated area and setting personalised alerts. All documents supporting the consultation process should be easily accessible through those portals (e.g. the consultation portal in Slovakia – Box 12 and the use of online tools in Estonia - Box 13). This does not mean that individual ministries and agencies cannot keep their specialised portals; however, all ongoing consultations should be accessible from the central portal. Governments may find it useful for the portal to host social media-like 'discussion rooms', enabling an interactive exchange of opinions among stakeholders and the administration.

Box 12. The Slovak Republic's government consultation portal

Public consultations are required for every legislative proposal submitted to the Slovak government. All legislative drafts and their accompanying impact assessments are automatically published on the government portal www.slov-lex.sk at the same time as they enter the inter-ministerial comment procedure. The portal provides a single access point to comment on legislative proposals and non-legislative drafts (e.g. concept notes, green or white papers). It seeks to ensure easier orientation and search in legislative materials to facilitate the evaluation of the interministerial consultation process, and to support compliance with legislative rules and time limits.

Both public authorities as well as members of the general public can provide comments on the legislative drafts and the accompanying material. All comments submitted are visible on the website. The deadline for comments is usually 15 working days. The general public can also access all final legislation through the government portal. Written comments can be submitted by members of the general public either as individual comments or as "collective comments", to which individuals or organisations can signal their support. Whenever a comment receives support from 500 individuals or organisations, ministries are obliged to provide written feedback on the comment, either taking the comment into consideration for the legislative proposal or explaining why the comment has not been taken into account. The feedback provided is then part of the dossier submitted to the government for discussion.

Virtually all legislative proposals are adjusted following the consultation process. The number of comments received varies significantly for different legislative proposals. Accompanying impact assessments to the legislative proposal are also updated on the basis of comments received. Following the consultation process, a summary of comments received together with the reasoning for their consideration or non-consideration is published on the portal for all consultations.

The [2015 OECD Public Governance Review of the Slovak Republic](#) finds that the number of comments received through the portal varies and that the portal is not used to the optimal extent by external stakeholders due to low user-friendliness and a lack of awareness of the possibility to comment through the portal. The latest version of the portal launched in April 2016 comprises a range of new features to increase user-friendliness, including the possibility to access and search through the portal all existing legislation

that is part of the Official Gazette.

Source: OECD Pilot database on stakeholder engagement practices in regulatory policy. <http://www.oecd.org/gov/regulatory-policy/pilot-database-on-stakeholder-engagement-practices.htm>

Box 13. Online tools to facilitate stakeholder engagement in Estonia

The Government of Estonia places a strong focus on accessibility and transparency of regulatory policy. All steps in the legislative process are public and can be tracked online from the initiation of a legislative proposal by the Estonian government to the official publication of a regulation in the State Gazette. A range of online tools are used to engage with stakeholders in regulation-making and support the accessibility of regulation.

The Ministry of Justice publishes an [online list](#) of primary laws to be prepared, modified, reformed or repealed within the following year. The list is usually updated on an annual basis. Updates to the list may be made in the course of the year in case a ministry informs the Ministry of Justice about changes to their legislative agenda.

The [Electronic Coordination System for Draft Legislation](#) (EIS) tracks the development of all Estonian and EU draft legal acts, and makes available RIAs and documents of legislative intent (describing the problem to be addressed, analysing policy options and determining initial likely impacts). EIS is the official system used for inter-ministerial consultations, public consultations at an early stage in the legislative process on the basis of legislative intent documents and at a later stage on draft regulations, as well as for the submission of legislative drafts to the Government and Parliament. EIS allows any member of the general public to follow the development of a draft legal act, search for documents in the system, and give their opinion on the documents open for public consultation.

The website www.osale.ee/ is an interactive website of all ongoing consultations where every member of the public can submit comments on legislative proposals or other policy documents prepared by the Government and review comments made by others. It also allows the public to submit ideas and suggestions for new legislation or amendments to existing legislation on any policy matter, which are forwarded to the responsible ministry for consideration. EIS and www.osale.ee/ are linked, i.e. EIS takes into consideration opinions submitted via www.osale.ee/ and provides a direct link to them.

The [official Estonian State Gazette](#) is an online up-to-date database of all national and local primary and subordinate regulations presented in a searchable format. It allows for searching any draft legal instrument that has been submitted for approval to the Government, and subscribe to notifications about the initiation of legislative amendments via e-mail.

Source: OECD Pilot database on stakeholder engagement practices in regulatory policy. <http://www.oecd.org/gov/regulatory-policy/pilot-database-on-stakeholder-engagement-practices.htm>

61. At the same time, **ICTs are not the only way of communication with the public. Governments should mind the digital gap.** Digital engagement requires optimal design - taking into account the needs of both policymakers and the public and investment of resources. Stakeholders that cannot or do not want to communicate electronically should not be excluded from the engagement process.

62. **Governments should not be afraid to experiment with new tools.** They should not be afraid to use any available communication channels, including social media.¹⁶ Such communication channels could solicit stakeholder engagement input at different stages of the policy cycle to guide, inform and orient the strategy of government, taking into account the anecdotal nature of such input, which limits its utility as the basis for generally applicable regulatory requirements. While this might appear as the ultimate stage of stakeholder engagement, it requires overcoming the current citizens' disengagement and the marginalisation of some groups of society.

16. See also Mickoleit, A. (2014).

63. An area with significant, though still mostly untapped potential is the use of behavioural insights as a tool for engaging with stakeholders and collect feedback on what works and meet citizens' needs. Feedback from stakeholders can provide useful signals on the existence of a behavioural problem in applying regulations. Surveys and feedback provided by users through, for example, complaint mechanisms can help identify problems related to, for example, poor or too much or distorted information and behavioural barriers to compliance and decision that could be amenable to behavioural experimentation. Experimentation and testing can also become an effective way to conduct targeted engagement with stakeholders and collect inputs and feedback on policies and interventions "in the making". However, there has to be clarity on the perimeter of the engagement, transparency on the way in which stakeholders are being involved to dispel any suspicion of manipulation or "tricking" citizens and the results of the engagement process (see an example of the use of behavioural insights to engage with stakeholders on regulatory reform in Colombia - Box 14).¹⁷

Box 14. Use of behavioural insights to engage with stakeholders on regulatory reform in Colombia

The Colombian Communications Regulation Commission (CRC) has initiated a reform of the consumer protection regime for the communications market in Colombia using behavioural insights and other ways of engaging with stakeholders. The reform focused on the types of incentives that should be provided to change both provider and user behaviour, and considers where appropriate regulatory interventions needed to ensure that these incentives are realised. The reform process was carried out in multiple stages.

As a first step, CRC conducted surveys and interviews and worked with the School of Psychology at the Konrad Lorenz University Foundation (KLUF) in Colombia to conduct a variety of consumer psychology exercises that explored the decision making processes of users in a number of scenarios specific to the cultural and contextual characteristics of Colombia across different regions.

In a second stage, the CRC approach to consumer protection was analysed to develop recommendations for reform. The analysis built on the findings of the initial exercises as well as additional experiments and input of OECD experts in regulatory policy, behavioural economics, digital government and data analytics. Recommendations were issued in the areas of information provision to users, customer service mechanisms, consumer consumption control mechanisms, and bundling of services. It was suggested that CRC can use a mix of regulation and non-regulatory tools to shape the incentives that could change both provider and user behaviour, with a view of improving consumer welfare in the communications market. The analysis identified instances where appropriate regulatory interventions are necessary to realise the desired outcome and made specific recommendations on possible follow-up experiments to test some of the possible solutions to help consumers better understand the information provided by service providers.

In the final stage, the CRC developed a revised regulation for the telecommunications consumer protection regime taking into account the analysis results. A public consultation on the revised draft regulation was conducted on-line and through working group meetings with consumers and operators between May and August 2016. During the consultation process, the CRC also organised an international forum to present the key elements of the draft regulation to stakeholders, share international practices and identify areas for follow-up and refinement. Furthermore, the CRC worked with a private company on a variety of consumer psychology exercises to test the effects of the draft regulation before its finalisation. The final regulation is expected to be released in February 2017.

Source: OECD Pilot database on stakeholder engagement practices in regulatory policy. <http://www.oecd.org/gov/regulatory-policy/pilot-database-on-stakeholder-engagement-practices.htm>

64. To maximise the quality of information received, **governments should consider the stakeholders' perspective and use effective approaches in engaging citizens based on their particular circumstances and considerations.** Many stakeholders are often reluctant or unwilling to participate in engagement activities launched by government. In order to catch citizens' attention and encourage them to engage, governments must adapt their activities to citizens' needs. This means adapting language and style to the public while making the interaction attractive and interesting, friendly, honest, and non-condescending. Governments need to demonstrate to citizens that their inputs are valuable and that they are taken into account. Or at least, governments should explain why inputs have not been taken into account when making policy. If they fail to do so, citizens may prove unwilling to spend their precious time

17. For more information and examples, see OECD (forthcoming), *Cracking the Behavioural Insights' Nut: Behavioural Sciences and their Application to Policy Design and Delivery*, OECD Publishing, Paris

responding to future government invitations (OECD, 2001a). Another way to demonstrate its commitment is for governments to measure and evaluate their engagement activities and report to the public. For example, the number and type of events held, number and type of stakeholders involved, number and type of alternatives identified and considered. This will allow governments to continuously improve their engagement process, and track and report success stories.

65. Structuring a continuing dialogue with a wide range of interests can result in more intensive examination of the issues, faster introduction of (and reaction to) new ideas, improvement of trust and mutual confidence between affected groups and regulators, and establishment of more effective working relations in the longer-term as regulations are implemented. However, dialogue-oriented consultation processes may be difficult to manage, especially when consultation is occasional, and ongoing working relationships between interests are not established.

66. To further improve the input received from stakeholders, **it might be necessary to educate stakeholders to the engagement culture**. Stakeholders need to be well informed on when and why they might have a chance to influence governments' decisions. Governments should invest in civic education for adults and youth (for instance through schools, special events, awareness-raising campaigns) and support initiatives undertaken by others with the same goal (e.g. sponsorship of civil society organisations' events). Governments should also foster civil society and deal with capacity constraints on the side of stakeholders by developing a supportive legal framework (with rights of association, tax incentives, etc.), providing assistance (with grants and training), developing partnerships (with joint projects, delegated service delivery, etc.) and providing regular opportunities for dialogue – for instance under a jointly defined framework for government-civil society interactions (See the example of Latvia - Box 15).

Box 15. Council for co-operation with non-governmental organisations in Latvia

Latvia introduced a Co-operation Memorandum between the Cabinet of Ministers and non-governmental organisations (NGOs) in 2005. It aims to promote effective work of the public administration in the public interest and to ensure the involvement of civil society in the government's decision-making process. As of today, 424 NGOs have joined the Co-operation Memorandum. A Council for Implementation of the Co-operation Memorandum was established as an advisory body to facilitate continuous consultations between the public administration and NGOs which have joined the Co-operation Memorandum. It is the main co-operation platform between government and NGOs in Latvia.

The members of the Council equally represent both the public administration and NGOs. Council members from the NGOs are elected each year and a half among the participating NGOs. Any NGO that is registered in the Latvian Register of Associations and Foundations and willing to respect its objectives can join the Memorandum.

The Council meets on a monthly basis to discuss issues in different areas. Topics include the assessment of stakeholder engagement by line ministries according to criteria developed by the ministries and NGOs based on an annual survey of ministries' practices, the assessment of NGO participation in the drafting of regulations and policy planning documents, the implementation of policies affecting NGOs, as well as other issues raised by NGOs on problems in certain sectors. In addition, representatives of the Council participate in the State Secretaries' meetings, the Cabinet of Ministers Committee meetings and the National Tripartite Cooperation Council meetings in an advisory capacity. This provides the NGO sector with an opportunity to perform a watchdog role of government.

The Council makes recommendations to the government for the revision of existing regulations or draft laws/policy documents, as well as the establishment of working groups for the revision of existing regulation or policy documents. While the decisions of the Memorandum are in form of recommendations, in practice the Council is used by the government as a mechanism to obtain the opinion of NGOs on issues that are relevant to them and take them into account for final decisions.

The public has access to the documentation of the Council's work. The Council's [annual work plan](#), as well as agendas and records of Council meetings are publicly available on the Cabinet's [website](#). In addition, Council meetings can be watched online as a livestream.

Source: OECD Pilot database on stakeholder engagement practices in regulatory policy. <http://www.oecd.org/gov/regulatory-policy/pilot-database-on-stakeholder-engagement-practices.htm>

67. **Governments have to be aware of and try to prevent 'consultation fatigue' among stakeholders.** It is therefore necessary that stakeholders are not asked for similar information or views too often. All stakeholder engagement should be recorded and reviewed periodically. Before new engagement is planned, previous engagement should be reviewed as an initial step and then an objective should be set if more engagement is needed. This way stakeholders aren't frustrated with repeating information already given. Stakeholder engagement should be proportional to the significance and impact of the regulatory draft. Creating user-friendly consultation portals (see e.g. Box 16), making it easy to find ongoing consultations for potential consultees and to choose which ones are important to them and to provide input is helpful. And most importantly, there must be a visible impact of engagement activities; stakeholders tend to lose interest if they see that their views are ignored or not taken seriously.¹⁸ Important contributions should be acknowledged and transparent feedback on how stakeholder input was considered should be provided. Co-ordination of stakeholder engagement activities across government departments/agencies should ensure, wherever possible, the minimization of duplicative consultations with the same stakeholders on similar issues.

Box 16. Finland's online stakeholder engagement platform *otakantaa.fi* – "Have your say"

The eParticipation platform otakantaa.fi was launched in order to enable better interaction with the broader public during the early phase of policy-making. *Otakantaa.fi* aims to enable, enhance and promote the dialogue between citizens and the public administration to increase the quality of legal drafting, gather information on the different views, impacts and opportunities related to the practical implementation of the issues under consideration, and improving the trust in regulation and in democratic decision-making.

The website allows both public officials and members of the general public to start discussions on various topics, including the drafting of new laws to mapping needs and ideas for new policies. Stakeholder engagement is possible through two different tools: discussion forums and web surveys. Projects and initiatives are categorised on the platform by geography and by keywords, which can be chosen by the initiators of projects. The government structures and moderates the discussions, e.g. by providing guiding questions or supporting material. More than 90% of consultation projects are started by the government (national or local), and only 10 % are started by civil society and individuals. Business organisations (consulting firms) may start discussions when they support government organisations to arrange consultations.

Inputs received from stakeholders vary between long and detailed comments with some idea or evidence and short opinions or votes signalling participants' agreement or disagreement. Inputs gathered can be used by public officials to inform further policy making, e.g. the authorities' decision-making, law drafting, development of action plans or the identification of reform requirements.. Usually, the initiator provides a summary of the discussions or the results of the survey as a follow-up to the consultation process, which is attached to other drafting material used in the government's decision-making process.

A research project was launched in 2015 to evaluate consultation practices in the regulatory process, including *otakantaa.fi*, by a research group of the University of Helsinki. According to [the results](#), attention should be focused on the scope, transparency and timing of hearing. The results also indicate that online consultation has yet to make a significant breakthrough in Finland although it has been used successfully in several law drafting cases.

Source: OECD Pilot database on stakeholder engagement practices in regulatory policy. <http://www.oecd.org/gov/regulatory-policy/pilot-database-on-stakeholder-engagement-practices.htm>

...and its effectiveness. (OECD 2012, Principle 2.2a)

68. Governments have an obligation to account for the use they make of citizens' inputs. It is therefore necessary that the **administration explains how stakeholder input has been assessed and**

18. Evaluating, measuring and reporting the outcome of stakeholder engagement is one way to counteract the issue of dissatisfaction. For example, reporting the number of changes finalised, or the cost savings from removing or changing a regulation that resulted from stakeholder engagement might be used as indicators in case of consultations on draft legal act.

incorporated in the decisions reached. The feedback does not have to be provided individually to each of the consultees. A summary of the specific inputs received and how these inputs have been taken into account (and if not, explaining why) in the preparation of the regulatory measure can go far in building public confidence in the value of the consultation process. This way, governments can increase trust among stakeholders through the fact that their input is seriously considered and can result in policy changes in the regulatory process. Providing the respective decision-making authorities with the summary of public engagements will also help to prepare these authorities for potentially negative reactions from the public.

69. The engagement process cannot be effective if it is captured by vested interests. **When processing stakeholders' input, it is necessary to balance different interests and prevent 'regulatory capture' by strong lobby groups and special interests.**¹⁹²⁰ While opening the process to as many stakeholders as reasonable is a necessary prerequisite to getting the widest possible spectrum of views, there is always a danger that those with more resources and experience in influencing government decisions (lobbyists, organised interests, powerful interest groups and CSOs) will capture the consultation process. It is therefore necessary to master the political challenge of balancing divergent inputs and filtering organised campaigns by pressure groups. Government is elected to develop policy and to make decisions. Government can decide to follow the demands of citizens and it can also decide to go its own way instead. **Clarifying that the objective of stakeholder consultations is to obtain information for the benefit of the public as a whole and not a vote may help deflect pressures to listen to the loudest voices.** Stakeholder engagement should foster understanding and clarification of a policy issue and should provide citizens and interested parties with the opportunity to have their voices heard. This way, it gives the chance for consensus to form in the first place. And it provides government with a broader view of opinions and interests, a way to balance them, and a better basis for decision-making.

70. Engagement and consultation with stakeholders can become erroneously conflated in the public's mind with consensus. Mixing up consultation with negotiation can create unrealistic expectations on the acceptance of stakeholders' views in the approved regulation. Informed participation can help dispel some of these confusions. Informed participation can be facilitated through clear and simplified information on the issues at stake and proactively reaching out to those stakeholders which can be less resourceful, for example, in the area of economic regulation, residential consumers or new market entrants (OECD 2016).

71. IT tools are being developed in some countries to analyse the comments received, to help identify the substance of each comment and to identify duplicities that may occur when a campaign is organised by pressure groups (e.g. emails with the same or similar texts are copied and sent to the administrations by a number of people or organisations). Also, Natural Language Processing, cognitive computing tools are being developed to map sentiment and support positions of commenters, new innovations can help enhance

19. Remedies to secure unbiased and inclusive policy making include increasing transparency and integrity in lobbying and better managing conflict of interest. For more directions and guidance to foster transparency and integrity in lobbying, see the *OECD Principles for Transparency and Integrity in Lobbying* - www.oecd.org/corruption/ethics/Lobbying-Brochure.pdf. Similarly, the OECD Guidelines for Managing Conflict of Interest in the Public Service provide policy makers with a set of tangible policy options based on promoting individual responsibility, supporting scrutiny and creating an appropriate organisational culture.

20. The latest research suggests that biased behaviour, whereby impartiality is challenged, results from a wide range of conflicts of interest. These include economic factors, as well as non-material considerations including values, experience, status, power, personal commitments, and professional ambitions. This suggests that the causes of bias may be more widespread than has been considered traditionally and that future policies for stakeholder engagement and for the selection of scientific and other experts should reflect this. See for example, Shalvi S., Gino F., Barkan R., and Ayal S. 'Self-serving justifications: doing wrong and feeling moral' (Current Directions in Psychological Science, 2015)

analytics. While the usage of these tools are still in the experimental stage, countries should pay close attention to their future potential in making public consultations more efficient.

Governments should consult with all significantly affected and potentially interested parties, whether domestic or foreign, where appropriate at the earliest possible stage while developing or reviewing regulations (OECD 2008a)

72. Direct effects of engaging citizens depend very much on when citizens become involved. If this is at a later stage in the policy-cycle – close to or even after decision-making – government officials may be reluctant to change their approach and citizens can have little real impact on policy-making. In contrast, when involving citizens early in the policy cycle – at the stage when the administration is still able and willing to significantly change the regulatory draft – governments can achieve much better effects and improve regulatory outcomes.

73. Engaging with stakeholders should therefore start as early as possible in the process. When developing new regulations, stakeholders' input should be used already in the phase of defining the problem and the goals for the new regulation, particularly in cases where there is a lack of data and the regulator has not decided to move forward with a proposal. In fact, even before the work starts on preparing a new law or regulation, stakeholders might be consulted, for example, through green and white papers²¹ (see Boxes 4 and 17). Also, when reviewing existing regulations, early stakeholder engagement should help to better target the efforts and to focus on those regulations that are perceived as the most burdensome and/or irritating for stakeholders. Listening to stakeholders' needs might also help to find more efficient strategies for implementation and enforcement of regulations that focus on promoting compliance by regulated subjects.²²

74. The increasing use of consultation at earlier stages of the policy process should help identify and assess available policy options prior to the direction of regulation having been settled. Consultation documents should explicitly identify both the underlying policy objective and the widest possible range of alternatives. It should also make clear that an objective of the process is to uncover additional policy options that may not have been apparent to policy-makers. The “regulatory culture” prevailing among policy-makers must be open to this kind of input. Such broad thinking is further supported if the public is systematically and periodically notified of regulatory measures that regulators are developing or plan to develop in the future (pre-notification).

Box 17. Green Paper on Vulnerable Children (New Zealand)

The [Green Paper for Vulnerable Children](#) was launched by the New Zealand Ministry of Social Development in 2011 as a discussion document to outline ideas, potential policy changes and potential service delivery changes prior to drafting policy in order to address the issue of vulnerable children in New Zealand. It included 43 questions to stakeholders and invited the general public to provide feedback on the ideas on future policy that were outlined in the Paper in the period between July 2011 and February 2012.

The Green Paper outlined issues and described ideas to address the issues on 32 pages. Following an introductory chapter on the background of the topic and on the consultation process, the ideas presented were clustered in four chapters (“Share responsibility”, “Show leadership”, “Make child-centred policy changes” and “Make child-centred practice changes”). Each chapter included specific questions to stakeholders as a basis for their submissions. Further links to references on the topics were included within the paper.

Stakeholders were able to engage by submitting comments via email, mail, or by using a form with nine priority questions and

21. In some countries jurisdictions, green papers are government documents that propose and invite discussion on approaches to a problem. They serve as a basis for consultation and debate among interested parties invited to join in a process of discussion on a specific policy area circulated as this initial-draft document.

22. See, for example, Local Better Regulation Office (2010), *From the Business End of the Telescope*, London

single-question postcards which could be sent in free of charge. In order to increase awareness and to encourage comments, the campaign also included two dedicated websites (<http://www.childrensactionplan.govt.nz/> and <http://www.saysomething.org.nz/>), a [Facebook page](#), a Twitter account and pop-ups on media websites. Locally, the campaign engaged stakeholders through 17 in-person events as well as a Green Paper Campervan Drive, where a campervan travelled around New Zealand, making 32 stops over 13 days to collect submissions. To facilitate stakeholder engagement, three “Green Paper Champions” who had shown commitment to children’s welfare were chosen. They served as a public face for the consultation process, and had high public profiles which enabled them to generate interest for the public to write submissions.

Stakeholders were also engaged in the drafting process of the Green Paper through the establishment of advisory groups. The “Scientific Panel” provided an academic and research lens over the document to ensure that there was scientific rigour to the Green Paper when considering the empirical evidence and understanding aspects of cumulative risk, vulnerability and protective and risk factors. The “Frontline Panel” provided advice to the drafters of the Green Paper from providers directly working with vulnerable children.

Throughout the campaign, almost 10,000 submissions were collected from the general public, civil society, frontline workers, academia and other organisations. Submissions were received in the format of “Question and answer” (responding to specific questions in the Green Paper) or as “Free-form submissions”, which did not specifically answer any questions, but addressed issues covered by the Green Paper which submitters wished to comment on. Contributions were read, coded and analysed in order to identify themes and recurring suggestions. A [summary of submissions](#) was made publicly available, including a description of the consultation process, the methodology of analysis and a detailed overview of summarised stakeholder submissions. The insights from the consultation process informed a [White Paper](#) which was released one year after the Green Paper and informed the development of the [Vulnerable Children Bill](#) in 2013 and the [Vulnerable Children Act](#) in 2014.

Source: OECD Pilot database on stakeholder engagement practices in regulatory policy. <http://www.oecd.org/gov/regulatory-policy/pilot-database-on-stakeholder-engagement-practices.htm>

Make available to the public, as far as possible, all relevant material from regulatory dossiers including the supporting analyses, and the reasons for regulatory decisions as well as all relevant data. (OECD 2012, Principle 2.2c)

75. **To obtain useful input from the public during stakeholder engagement, it is necessary for the government to provide specific information.** Taking into account the perspective of stakeholders and depending on the stage of the consultation process, consultees will be more likely to participate and provide relevant information if regulators provide sufficiently detailed information about the initiative for them to be able to judge how they may be affected, rather than general descriptions.. For example, the 2012 *OECD Council Recommendation on Regulatory Policy and Governance* notes that, “In designing regulation governments need to be aware of the incidence of regulatory costs on businesses and citizens and of disproportionate impacts on small to medium-sized enterprises and micro businesses.” In this case, to obtain information on that “incidence” a regulator must provide a specific consultation tool, such as the draft text of the regulatory proposal, a plain-language description of the proposal (which is particularly important when the proposal is highly technical), the RIA, and any other underlying data.

Consult on all aspects of impact assessment analysis and use, for example, impact assessments as part of the consultation process. (OECD 2012, Principle 2.2b)

76. **Stakeholder engagement should be closely integrated with Regulatory Impact Assessment.** Engaging with stakeholders is a firm part of the Regulatory Impact Assessment process. The OECD has been advocating close co-operation with stakeholders when defining the problem that is to be solved by a new regulation, setting its objectives, identifying various alternative solutions (including non-regulatory ones) and assessing potential impacts of these alternatives as well as when designing potential implementation mechanisms. In other words, every single phase of the RIA process requires input from interested parties (see the example of consultations on RIA in Canada - Box 18).

77. At the same time, **it is advisable to provide as much information on a given regulation as possible** when engaging stakeholders, especially the reasons for adopting such regulation, underlying analyses, results of preceding consultations with stakeholders, etc. Whenever RIA has been conducted, it should be published together with the draft regulation²³, because it usually contains valuable information on what alternatives have been considered and what were the reasons for choosing the selected option (see the example of Mexico - Box 19).

Box 18. Required consultations on Regulatory Impact Analysis Statements (RIAS) in Canada

Consultations on regulatory proposals and their accompanying RIAS have been a longstanding practice in the Canadian system. As per the Treasury Board Secretariat [Guidelines for Effective Regulatory Consultations](#), government departments and agencies must make systematic efforts to ensure that interested and affected parties have the opportunity to take part in open, meaningful, and balanced consultations at all stages of the regulatory process (development, implementation, evaluation, and review).

A variety of methods are used to involve stakeholders in consultations on the RIAS. They include the use of emails, phone calls, third-party facilitated sessions, roundtable meetings and online consultations. In a second step, regulatory proposals and their accompanying RIAS are pre-published in the [Canada Gazette, Part I](#) for public consultation. Regulatory organizations are asked to revise the RIAS according to the results of the pre-publication consultation process. Stakeholders can comment on the draft RIAS documents, submit comments in the form of letters via email, fax or by mail to the listed departmental contact in the RIAS. Their input can either highlight concerns regarding methodology or reasoning, or point towards concerns related to distributional questions (e.g. undue burden placed on one region or industry), or be a submission of alternative analysis prepared by the stakeholder for consideration by the department or agency.

A great number of regulations are updated as a result of the consultation process on the draft text and the RIAS. Departments and agencies review comments and respond to stakeholders' concerns through a variety of measures, including through letters, alteration of the regulatory proposal (e.g. by adding amendments and/or providing clarifications) and, in exceptional cases, adapting the costs and benefits section if the consultation alerted the regulators to unforeseen regulatory impacts. Furthermore, departments and agencies must summarise the comments received, explain how stakeholder concerns were addressed, and provide the rationale for the regulatory organisation's response (i.e., the decision to change or not change the draft regulation) in the final RIAS, which is then published in the [Canada Gazette, Part II](#) together with the final regulation.

Source: OECD Pilot database on stakeholder engagement practices in regulatory policy. <http://www.oecd.org/gov/regulatory-policy/pilot-database-on-stakeholder-engagement-practices.htm>

Box 19. Consultation as part of the RIA process in Mexico

Regulatory Impact Assessment (RIA) is conducted systematically in Mexico for all regulations issued by the Executive Branch of Government that impose compliance costs on the private sector and citizens. After ministries and regulatory agencies have prepared a regulatory proposal and an accompanying RIA, the RIA is formally submitted to the Federal Commission for Regulatory Improvement (COFEMER) in electronic format for scrutiny, and automatically published in COFEMER's online system for publishing and consulting on RIAs (SIMIR).

Stakeholders can provide comments on the draft proposal and the RIA. The general public can comment through the COFEMER consultation portal or send comments via e-mail, fax, or letters. Consultations are required to be open for at least 30 working days before the intended date of their issuance. In practice, much longer consultation periods are the norm. Besides the public online consultation process, COFEMER also uses other means to consult with stakeholders. These include advisory groups, media and social networks (tweets) to diffuse the regulatory proposals and promote participation.

Stakeholder comments are published on the COFEMER website and required to be taken into account by COFEMER and the agency sponsoring the regulation. COFEMER is obliged to take into account all comments received during the consultation process for its official opinion on the RIA. The sponsoring agency must provide a reply to each comment received during the consultation respond to the official opinion of COFEMER. Once a satisfactory response has been received, the COFEMER certifies the RIA as final and the regulatory process proceeds. In practice, regulators' responses to the COFEMER's comments on the draft RIA

23. The European Commission consults on all particular elements of RIA, however the final RIA report is published only after the regulatory proposal is approved by the College of Commissioners.

frequently fail to address adequately all of the concerns raised in relation to the analysis. In such circumstances, the revised draft may be deemed by the COFEMER to constitute another draft RIA rather than a final document and a second round of consultation is conducted.

Documentation on the consultation processes are publicly available. Each regulatory proposal has its file on the SIMIR system, which includes a summary of all documents received and issued (e.g. comments, opinions). Hence, the file shows the “life story” of a regulatory proposal, including how the regulatory draft was modified during the regulatory review process and how comments influenced the draft during public consultation. In addition, [COFEMER's annual reports](#) summarise information on the consultation processes, including information on the number of comments received grouped by government agency, and whether the comments were submitted by the private sector, government agencies or the general public.

Source: OECD Pilot database on stakeholder engagement practices in regulatory policy. <http://www.oecd.org/gov/regulatory-policy/pilot-database-on-stakeholder-engagement-practices.htm>

Structure reviews of regulations around the needs of those affected by regulation, cooperating with them through the design and conduct of reviews including prioritisation, assessment of regulations and drafting simplification proposals. (OECD 2012, Principle 2.2d)

78. It is becoming increasingly clear that if governments want to regain the trust of their societies, they must **listen to the perception of regulation by stakeholders all along the Regulatory Governance Cycle**.

79. Engaging stakeholders who have better information on the real-life effects of regulation can provide invaluable insights into any effort to evaluate the outcome of policymaking *ex post*. These insights, which complete expert advice, could be particularly valuable insofar as they help policymakers to understand the real impact and performance of the policy. Stakeholders’ input, for example, may help better targeting regulatory reviews, saving both costs and time in the review process (see the example of the German Life Events Survey - Box 20).

80. **Stakeholder involvement can greatly assist *ex post* evaluation and strategies to identify priority areas for review and reform.** Effective consultation is necessary to ensure that reviews are effective and credible. Stakeholders can be involved both in the process of identifying areas that may require reform as well as during the actual review process. Those affected by regulations that may not be responsive to the usual consultation procedures need to be pro-actively engaged. A calendar of planned evaluations should be discussed with stakeholders and published regularly. This would further contribute to structure the official evaluation activity and to increase transparency and accountability.

81. Participation of stakeholders at this stage of the regulatory policy cycle can vary – from mere consultation, to more deliberative forms of participation. A stronger role in the evaluative process generally leads to a stronger sense of ownership by the stakeholders and, as a result, can lead to better evaluative results. On the other hand, administrations must be careful not to disregard clear data as a tool for evaluation and get a clear sense what stakeholder participation at the evaluation stage is for: improving results of policy or making policy more legitimate by making it more inclusive. In case of the latter, dialogue with a wide variety of stakeholders can be more important than obtaining critical information from a number of experts in the field²⁴ (see Box 20 - the UK Red Tape Challenge).

Box 20. UK Red Tape Challenge

The Red Tape Challenge was run by the UK government between 2011 and 2014 and aimed to reduce “cost to

24 . Plottu and Plottu (2011), pp. 805-824)

business” by removing regulatory burdens unless they could be justified. Specifically, the objective was to scrap or improve at least 3,000 regulations and save £850m per year for business. The Red Tape Challenge was designed to crowdsource the views from businesses, organisations and the public on which regulations should be improved, kept or scrapped. It invited the general public to comment via the internet on the usefulness of regulations within a set time limit. People could comment both publically through comments on the website or through a non-public e-mail inbox.

The initial scope included 21,000 statutory rules and regulations and the enforcement of regulations. Regulations in relation to tax or national security were excluded. The consultations during the Red Tape Challenge finally covered 5,662 regulations. These were clustered in 28 Themes and over 100 Sub-Themes. 6 Themes covered general regulations (e.g., Equalities, Environment) and were open throughout the entire time. 20 Themes covered a specific sector or industry and were open for consultation over several weeks each ("Theme Spotlight"). 2 additional Themes covered "Disruptive Business Models/Challenger Businesses" and "Enforcement" and were open for consultation during dedicated periods.

Over 30 000 comments from the public were received during the Red Tape Challenge, which were scrutinised by government and external actors. The responsible departments had 5-6 weeks to deliver proposals and arguments on whether to scrap, modify, improve or keep regulations. These proposals were challenged internally by so-called "Tiger Teams" made up of departmental staff who would review their own policies independently of the Red Tape Challenge, and externally by "Sector Champions" representing businesses, industries and stakeholder groups, as well as business panels. The proposals were then reviewed in the "Star Chamber", which was chaired by the Cabinet Office and Business, Innovation and Skills ministers and involved key government advisors. The Star Chamber then issued a recommendation to which departments could respond. Finally, the Cabinet sub-committee decided on actual changes, supported by other Cabinet sub-committees where necessary.

The Red Tape Challenge has resulted in a range of regulatory changes. 3,095 regulations were to be scrapped or improved. 1,376 of the changes made had a material benefit (where "the reform has an impact for business/civil society, individuals or the taxpayer and that is over and above tidying the statute book"). Scrapped or improved regulations are reported to have led to annual savings for businesses over GBP 1.2 billion.

Source: OECD Pilot database on stakeholder engagement practices in regulatory policy. <http://www.oecd.org/gov/regulatory-policy/pilot-database-on-stakeholder-engagement-practices.htm>

82. There are different mechanisms to involve stakeholders in *ex post* evaluation exercises. In some instances stakeholders trigger the evaluation process through the Ombudsman or parliamentary committees. In other instances stakeholders are requested for their comments by the responsible ministry or agency. In some countries, stakeholders are embedded into the entire regulatory process and therefore are also part of the *ex post* evaluation system (See the example of Latvia - Box 15). The use of ICTs through creating a virtual forum for assessing post-implementation impacts can also be applied.

83. The most common method of verifying public perceptions of regulation is the use of perception surveys, which monitor citizens' perceptions of regulations by asking them questions about their views on regulatory performance on certain issues (See Box 21). However, such surveys need to be designed carefully in order to obtain usable results, as the order of questioning, question priming, complexity, social desirability and cultural differences may influence the outcomes of surveys.²⁵

Box 21. Perception surveys on the quality of law and the administration in Germany

The Federal Statistical Office was commissioned by the Federal Government in 2015 to conduct surveys of individuals and companies on their subjective perception of public authorities and the body of law in specific life events. The survey exercise aims to identify measures for a more noticeable bureaucracy reduction and will be repeated every

25. OECD (2012), *Measuring Regulatory Performance: A Practitioner's Guide to Perception Surveys*, OECD Publishing.

two years.

The approach identified typical life events in which citizens and companies interact with public authorities. 22 life events for individuals were selected ranging from the birth of a child to marriage, unemployment and need for long-term care. Similarly, 10 events for companies based on a company's life cycle were selected, including business start-up, the appointment of employees, and business discontinuation. For every life event, an interactive customer-journey map was constructed displaying the typical and most important offices citizens or businesses have to contact and the procedures they have to complete to obtain the respective service.

In telephone surveys, more than 5,500 individuals and ca. 1,500 companies indicated their satisfaction with public agencies. The interviews inquired about the level of satisfaction of the interviewees with the services provided and the subjective importance they attach to different factors of their experience (e.g. the comprehensibility of the law, access to relevant information, non-discrimination, trustworthiness and opening hours).

Results show that on average, both citizens and businesses are largely satisfied with government services. On an ordinal scale from +2 (very satisfied) to -2 (very unsatisfied), the aggregate rating was +1.06 for citizens and +0.94 for companies. Both citizens and businesses consider trustworthiness of the public authority, non-discrimination, incorruptibility and professional expertise of public authorities' staff the most important factors for their level of satisfaction. Respondents of both surveys were less satisfied with the comprehensibility of the law in general and of the forms in particular, as well as with information provided on the steps in the administrative process. While 61% of the businesses surveyed consider e-government as an important factor, only 30% of the citizens did.

In response to the survey results, the 2016 Work Programme on Better Regulation of the German government outlines several measures to further improve legislative procedures and reinforce a citizen and business-friendly administration/e-government. They include initiatives to increase the comprehensibility, transparency and accessibility of legislation, a training programme for legislators, and the examination of how innovative approaches can be used to ensure that legislation is geared towards the needs of citizens and businesses.

Source: OECD Pilot database on stakeholder engagement practices in regulatory policy. <http://www.oecd.org/gov/regulatory-policy/pilot-database-on-stakeholder-engagement-practices.htm>

Reports on the performance of regulatory policy and reform programmes and the public authorities applying the regulations should be regularly published. Such reports should also include information on how regulatory tools such as ... public consultation practices ... are functioning in practice. (OECD 2012, Principle 6)

84. Evaluation of the performance of the stakeholder engagement policy itself should be carried out. It should be conducted by a body that is not directly involved in implementing the policy. Depending on the country context, this can, for example, be the Supreme Audit Institution, the Parliament or an independent advisory body.

85. **Governments should regularly evaluate both their stakeholder engagement policy and individual engagement activities towards achieving their goals.** While it is not possible to identify a one-size fit all best practice of engagement in regulatory policy, a robust evaluation system may facilitate the identification of more appropriate methods than others. These could then be recommended for different definable engagement contexts (see example of such evaluation conducted by the European Commission in Box 22).

86. Planning and conducting evaluation helps government officials to:

- See if their activities were successful: Were the tools effective? Have stakeholders been contacted as planned? Were the resources adequate? Have the objectives been reached?

- Demonstrate to others that the activities were successful: This is important to justify planning and activities.
- Learn from experience: Evaluating and sharing the results enable government to learn from their activities. It enables governments to compare activities and set benchmarks for good practice. This gives incentives for improving planning and practice, and raises awareness for strengthening government-citizen relations within the organisation.
- Redesign activities and create new ones on the basis of a reflection on their experience. This increases the chance for success in the future and builds capacity to respond to new and emerging demands.
- Do all this during and after implementing activities. Planning evaluation activities gives the chance to track the success and eventually modify activities not only after, but also during implementation.

87. Evaluation needs to be a part of proper planning. If governments start thinking about evaluation only during or even after implementation, they not only deprive themselves of some of the above-mentioned opportunities, but they will almost certainly run into problems, because measurements are not defined, necessary data not collected, and resources for evaluation are unavailable.

88. It is possible to use various tool for evaluation, such as:

- Informal reviews: Through informal contacts with CSOs and citizens and by asking for and listening to their comments, government officials get an impression of how their activities have been received by their publics. Through open discussions with staff within government, senior managers can learn about how the activities are valued internally. These reviews can be formalised and extended into workshops. If not, these informal reviews remain simple tools which do not deliver systematic information. However, they give some indications on the success of activities.
- Collecting and analysing quantitative data: Governments can collect data on a wide range of relevant areas, such as the number of requests for documents and information products, on the amount and content of complaints and proposals received, on attendance of events, etc. To collect and compare these figures across ministries and bodies, government needs to establish standard procedures and measurements.
- Participant surveys and public opinion polls: Surveys among attendees of events or readers of government publication can reveal information about their use and views of their contact with government. For the broader population, public opinion polls can help governments to determine the effects of their activities.
- Reviews: These are systematic and intensive evaluations of activities. They can involve diverse and broad data collection and in-depth analysis. This tool can be especially important for activities that are highly relevant, resource-intensive, experimental or complex. (OECD, 2001a)

89. Of course, governments have to effectively use the results of the evaluation. Once the evaluation is done, it needs to be published and communicated. This can happen via reports and presentations.

Governments should publish the evaluation reports, thereby contributing to higher transparency and accountability²⁶.

Box 22. European Commission evaluation of its consultation practices

The [2012 review of the EU Commission's consultation policy](#) is a comprehensive report describing and reviewing current consultation practices. It addresses issues such as the openness and reach of consultation and the use of input received during consultation.

The review draws upon different sources. First, it contains an analysis of international standards, among them the [2012 OECD Recommendation of the Council on Regulatory Policy and Governance](#). Second, an open consultation of external stakeholders was used to gather a wide range of opinions. Third, input from different Commission services was sought, including data on consultations and impact assessments carried out between January 2010 and August 2012.

The report provides indicators concerning the Commission's consultation practices, for example on the type of consultation, consultation tools, languages and length, as well as the availability of consultation outputs, and percentage of consultations with external parties in which the minimum consultation period was respected. The report also identifies measures that could be taken to enhance the quality of consultation, for example:

- Adjusting the minimum standards;
- Improving planning, for example by publishing a rolling calendar of planned consultations online;
- Improving follow-up and feedback, for example through developing alert systems to notify respondents at key stages throughout the policy-making cycle.

The European Commission's consultation practices were further refined in the [Better Regulation guidelines](#) and accompanying [Better Regulation "Toolbox"](#), which were adopted by the European Commission in May 2015 as part of a "Better Regulation Package". Reforms include new opportunities for the general public to participate in consultations on inception impact assessments for new regulatory initiatives with major impacts, on regulatory proposals after adoption by the European Commission, and on draft texts of delegated acts before adoption by the Commission. In addition, new methods of engaging stakeholders in the *ex post* evaluation of regulations were also introduced, including public consultations on roadmaps for evaluations and Fitness Checks, and a website collecting the public's views on existing EU legislation and suggestions for burden reduction and regulatory improvements.

Source : OECD (2014a), *OECD Framework for Regulatory Policy Evaluation*, OECD Publishing, Paris, <http://dx.doi.org/10.1787/9789264214453-en>; European Commission (2015), "Better regulation for better results – An EU agenda", retrieved from http://ec.europa.eu/smart-regulation/better_regulation/documents/com_2015_215_en.pdf, last accessed 9 March 2016; Source: OECD Pilot database on stakeholder engagement practices in regulatory policy. <http://www.oecd.org/gov/regulatory-policy/pilot-database-on-stakeholder-engagement-practices.htm>

All regulations should be easily accessible by the public. A complete and up-to-date legislative and regulatory database should be freely available to the public in a searchable format through a user-friendly interface over the Internet. (OECD 2012, Principle 2.5)

90. The aspect of regulatory transparency most closely related to the rule of law is the accessibility of the rules for regulated entities. **Regulatory transparency requires that governments effectively communicate the existence and content of all regulations to the public. The public should therefore enjoy unimpeded access to regulation, free of charge.** The 1995 OECD Recommendation asks if

26. For more insights on evaluating stakeholder engagement policy activities, see also OECD (2005) and OECD (2014).

regulations are accessible to users and recommends that: “the strategy for disseminating the regulation to affected user groups should be considered”. The economic implications of these kinds of problems can be high. The relationships between regulatory accessibility and clarity, on the one hand, and high levels of market entry and robust competition, on the other hand, are increasingly recognised, particularly in relation to international trade and investment regimes. In addition, opportunities for corruption and incentives for non-compliance increase with complexity and inaccessibility.

91. The 1997 OECD Report recommends that governments “create and update on a continuing basis public registries of regulations and business formalities, or use other means of ensuring that domestic and foreign businesses can easily identify all requirements applicable to them.” Efforts to count and register regulations accomplish more than regulatory transparency; they are also useful management and oversight tools. Registering the number of regulations creates a new sense of responsibility and discipline by making apparent the size and scope of the regulatory system and its rate of growth. It also assists co-ordination of the efforts of different regulatory authorities by ensuring a better and more systematic flow of information within the public administration. This reduces the risk of overlapping and inconsistent regulation. Establishing a central registry also assists governments in making one-stop shops available to businesses.

92. Given the different ways in which regulatory programmes are structured and implemented, transparency requires that governments and regulating ministries develop a comprehensive strategy to help those involved to find and understand regulations, structured in accord with the nature of both the regulations and interested parties involved.

93. ICTs are the most efficient way to enable access to regulations at one place. Electronic registers of regulations already exist in most OECD countries. The registers should contain not only primary but also secondary legislation. Preferably, not only regulations that are currently in force but also those that were abolished or previous versions of regulations which were amended should be available as well. The register should be searchable not only by keywords but also by areas of regulations, departments responsible, date of entering into force, etc. (see example of Estonian online tools for engaging with stakeholders - Box 12).

Governments should have a policy that requires regulatory texts to be drafted using plain language. They should also provide clear guidance on compliance with regulations, making sure that affected parties understand their rights and obligations. (OECD 2012, Principle 2.6)

94. Accessibility of regulations does not mean only publishing all regulations online. **Governments need to ensure that regulatory goals, strategies, and requirements are articulated clearly to the public. Therefore, when drafting regulations, plain language should be used, technical jargon avoided and clear definitions of new terms provided**, wherever possible and appropriate. This is essential to public confidence in the necessity and appropriateness of regulation. It is also a fundamental element in ensuring compliance. It requires, fundamentally, that legal texts be able to be read and comprehended by non-experts. A number of OECD countries have had plain language drafting policies in place for many years, and most of these provide formal guidance to regulatory policy-makers on how to implement these policies. (See Box 23)

Box 23. The promotion of plain language in OECD countries

In Germany, the Joint Rules of Procedure provide that the language used in bills must be “correct and understandable to everyone as far as possible”. Generally, bills are submitted to the relevant editorial offices to review the accuracy and comprehensibility of the language used. The federal Ministry of Justice provides support by issuing a “Manual of Legal Drafting”, which is also available on the Internet. The manual focuses on concrete suggestions on content, structure and form of laws and regulations. The manual also contains technical suggestions on legal definitions, stylistic criteria, references, and other linguistic components. In 2007 and 2008, the Ministry of Justice

conducted a project on “understandable legislation”. The project found that the comprehensibility and clarity of draft legislation could be improved significantly by involving relevant experts, lawyers and linguists at a very early stage. As a result, such multi-disciplinary linguistic counselling was institutionalised as of 2009. Training was provided to other administrations. As part of this commitment, additional posts were created and overall ten employees within the Ministry of Justice work exclusively on easily understandable legal language.

In Portugal, the Rules of Procedures of the Council of Ministers include an annex, which spells out requirements concerning drafting of regulations. This provides law drafters with rules on the structure and presentation of regulations, and on formal drafting requirements. In addition to a number of style rules (such as use of abbreviations, foreign language, acronyms, etc.), the text requires “clarity of language”. It recommends writing “short, clear and concise sentences”, using a plain language level, and avoiding vague expressions. Furthermore, in the framework of the Legislar Melhor Programme, the Presidency of the Council of Ministers has undertaken the preparation of a practical guide for officials and institutions involved in legal drafting. The guide will be an online database, with interactive tools, hyperlinks, model examples of draft legislation, and specific guidelines.

Source : OECD (2010b), *Better Regulation in Europe: Germany*, OECD Publishing, Paris, <http://dx.doi.org/10.1787/9789264085886-en>; and OECD (2010c), *Better Regulation in Europe: Portugal*, OECD Publishing, Paris, <http://dx.doi.org/10.1787/9789264084575-en>

95. Legal clarity is also essential to achieving high levels of compliance and effective enforcement. If rules and regulations are poorly written or unnecessarily complex in structure, disputes regarding meaning and impact will arise and both voluntary compliance efforts and enforcement programmes will be more costly. This is an issue of particular relevance to Small and Medium Enterprises (SMEs) who are unlikely to be in a position to hire specialists to advise them on regulatory interpretation.

96. Implementing plain language drafting is difficult because of the different priorities of those who read the regulation. Lawyers are primarily concerned with accuracy and consistency in meaning and tend to pursue this goal by adopting complex grammatical structures and technical terms that have been used and interpreted by parliaments and courts for previous decades. For many, plain language drafting carries grave risks of ambiguity, loss of precision, unexpected or unintended interpretations by courts and difficulties in enforcement. Regulators may want to stress the underlying goals of the regulation and can be less concerned with, or even less aware of, the technical details that enforcement-minded lawyers may want to include. Individuals or private institutions complying with or lobbying for regulations are likely to want wording and structure that have everyday meaning. The essence of plain language drafting is to meet this fundamental requirement without sacrificing precision and consistency. The efforts of a growing legal specialisation are establishing the means of achieving this in a range of different national and legal contexts. Guidance documents or materials that provide plain language explanations of the regulations should be developed, where possible.²⁷

97. Special measures should be adopted to support access to regulations by people with specific disabilities (sensory, motor or cognitive impairments) using the human and technological resources best suited to the physical context in which these citizens live and relate socially.

98. Transparency and compliance with regulations should be promoted through the use of appropriate instruments such as guidance, toolkits and checklists. For most regulated subjects, it is generally difficult to understand what they need to do to be in compliance with applicable regulations. In their guidance and information documents, governments should raise awareness of the rights involved in the regulated activity, and clarify in which ways compliance relates to the respect of these rights by regulated entities (see OECD 2014b).

27. See, for example Canada’s *Guide for Developing and Implementing Interpretation Policies*.

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