

Unclassified

English - Or. English

3 August 2022

**PUBLIC GOVERNANCE DIRECTORATE
REGULATORY POLICY COMMITTEE**

Cancels & replaces the same document of 2 August 2022

Better regulation and simplification

Background document

13th OECD Conference on Measuring Regulatory Performance: Better Regulation - meeting the challenges of the 21st Century, Brussels, 28-29 June 2022.

This paper provided background to the discussions in Breakout Session 3 of the 13th OECD Conference on Measuring Regulatory Performance, hosted by the European Commission in June 2022. It relies on material from the [Better Regulation Practices across the European Union 2022](#) report and other published OECD work.

It is available in PDF only.

Christiane Arndt-Bascle - Christiane.ARNDT-BASCLE@oecd.org

Paul Davidson - Paul.DAVIDSON@oecd.org

JT03500897



Better Regulation - meeting the challenges of the 21st Century

13th OECD Conference on Measuring Regulatory Performance

Background paper for breakout session #3 – Better regulation and simplification

Brussels

28-29 June 2022¹

¹ Note by the Republic of Türkiye The information in this document with reference to “Cyprus” relates to the southern part of the Island. There is no single authority representing both Turkish and Greek Cypriot people on the Island. Türkiye recognises the Turkish Republic of Northern Cyprus (TRNC). Until a lasting and equitable solution is found within the context of the United Nations, Türkiye shall preserve its position concerning the “Cyprus issue”.

Note by all the European Union Member States of the OECD and the European Union The Republic of Cyprus is recognised by all members of the United Nations with the exception of Türkiye. The information in this document relates to the area under the effective control of the Government of the Republic of Cyprus..

Better regulation and simplification

Introduction

Regulatory policy represents one of the key methods by which governments are able to make a positive difference to the lives of their citizens and improve social welfare. Regulations, and the process of making them, should reflect the needs and reality of society, but they also ought to adapt and react quickly to changes in the environment. This adaptation is more likely when the systems and practices for creating and improving regulations are fully embedded into the country's decision-making processes.

Sound regulatory management practices help to create an environment that fosters better regulations, which can contribute to improved economic performance. In particular, this entails consideration of whether to regulate and of alternative options; undertaking an assessment of impacts before the drafting, enactment, or modification of regulations; conducting evaluations of existing regulations to make sure that they are fulfilling their objectives; and the involvement of stakeholders throughout these processes.

When used correctly, regulatory management tools can contribute to increased trust in public institutions as well as regulations themselves, higher compliance and improve the transparency of regulation making. In addition, a sound impact assessment framework can assist in promoting policy effectiveness, efficiency, and coherence by clearly illustrating the inherent trade-offs within regulatory proposals. It can also reduce regulatory failure by demonstrating where regulations are unnecessary, as well as highlighting the failure to regulate when there is a clear need. However, many citizens around the world are experiencing regulations that either fall short of their intended effects or outright fail to offer the protections they promise (OECD, 2021^[1]). Inappropriate rules may lead to a loss of trust in institutions and even in government itself, and potentially to a lower compliance with rules.

The potential for a regulation to have significant impacts, whether positive or negative, necessitates it being carefully assessed before implementation. Part of that assessment involves engaging with affected stakeholders. This is now generally recognised across OECD member countries, where stakeholder engagement and impact assessments have become common and embedded in decision-making (OECD, 2021^[1]).

Over the years, the stock of regulation has accumulated in all countries, especially recently due to new rules introduced in response to the COVID-19 pandemic. The growing stock of laws can create excess regulatory burden on citizens and businesses – whose interactions with the government have become more complex over the past decades – which can lead to pervasive effects across the community and economy. While much of the regulatory stock generates important benefits, its effectiveness will vary and the associated costs can sometimes be greater than is necessary to achieve a policy objective.

Moreover, some of the regulations adopted during the COVID-19 pandemic have been exempted from stakeholder engagement or regulatory impact assessment when they were originally made, and this is especially the case for those made in haste in response to emergency needs (OECD, 2022^[2]). However, even regulations that have been properly assessed and well designed, and thus deemed fit for purpose initially, need not remain so. Markets change, technologies advance and preferences, values and behaviours within societies evolve, and regulatory management tools can help governments to tackle these challenges. Moreover, the accumulation of regulations over time can lead to interactions among them that exacerbate costs or reduce benefits, or have other unintended consequences. It is also evident that the stock of regulations will generally be much larger than the flow, with the aggregate impacts commensurately greater. Therefore, even a small improvement in the quality of the regulatory stock could bring large gains to society (OECD, 2020^[3]).

Looking into the future, strategic foresight, risk management, international regulatory co-operation and sustainability will become important components of delivering better regulation. Together with growing innovation, the balance will shift from *ex ante* impact assessment towards more of a regulatory lifecycle approach. Together with the need for more comprehensive approaches to regulation, this will bring additional skill and capacity demands within public administrations. Regulatory oversight bodies could play an important role, drawing on their cumulative experience, information and technical expertise in order to contribute to the quality of public policies and better regulation (OECD, 2022^[4]).

Regulatory stock management

The 2012 OECD Recommendation on Regulatory Policy and Governance calls on governments to “[c]onduct systematic programme reviews of the stock of significant regulation against clearly defined policy goals, including consideration of costs and benefits, to ensure that regulations remain up to date, cost justified, cost effective and consistent, and deliver the intended policy objectives” (OECD, 2012^[5]). In some circumstances, the formal processes of *ex post* impact analysis may be more effective than *ex ante* analysis at informing ongoing policy debate. This is likely to be the case for example, if regulations have been developed under pressure to implement a rapid response (OECD, 2018^[6]). A portfolio of approaches will generally be needed to ensure that the type of review undertaken is the most suitable and cost-effective (Box 1).

Box 1. The three main approaches to reviewing existing regulations

1. Programmed reviews require that regulations or laws with potentially important impacts on society or the economy, and particularly those containing innovative features or where their effectiveness is uncertain should have embedded review requirements within the legislative/regulatory framework. Programmed reviews can include:

- Sunset requirements which provide a useful “failsafe” mechanism to ensure the entire stock of subordinate regulation remains fit for purpose over time.
- Post-implementation reviews conducted within a shorter timeframe (1-2 years) that can act as a failsafe mechanism where processes for developing regulation may have been deficient – i.e., where *ex ante* regulatory assessment was deemed inadequate (e.g., by an oversight body) or a regulation was introduced despite known deficiencies or downside risks.

2. Ad hoc reviews encompass “stocktakings” of regulations across a sector, or the economy as a whole, where they provide a periodic opportunity to identify current problem areas. Stocktake-type reviews can also employ a screening criterion or principle to focus on specific performance issues or impacts of concern. Ad hoc reviews can include:

- “In depth” public reviews which are appropriate for major regulatory regimes that involve significant complexities or interactions, or that are highly contentious, or both.
- “Benchmarking” of regulation can be a useful mechanism for identifying improvements based on comparisons with jurisdictions having similar policy frameworks and objectives.

3. Ongoing stock management includes administrative processes that enable learning-by-doing as regulations are implemented. In addition, it includes regulatory offset rules (such as one-in one-out or various “red tape reduction” initiatives) and Burden Reduction Targets or quotas which need to include a requirement that regulations slated for removal, if still “active”, first undergo some form of assessment as to their worth. The review methods should themselves be reviewed periodically to ensure that they also remain fit for purpose.

Source: OECD (2020^[3]).

Governments across the OECD are increasingly trying to mitigate the costs of new regulations and reduce the existing stock of regulation. One of the approaches that has been gaining ground in the past years is offsetting new regulations by reducing existing ones. This approach aims to set net quantitative targets for reducing administrative or compliance costs (Trnka and Thuerer, 2019^[7]).

Given the size of the regulatory stock, there are also numerous opportunities to improve its functioning, thus increasing the benefits regulations provide, and at the same time ensuring that regulatory costs are kept to the minimum necessary. Evaluations of existing regulations can also produce important learnings about ways of improving the design and administration of new regulations – for example, to change behaviour more effectively (OECD, 2020^[8]). In addition, the evaluation of regulatory impacts *ex ante* is often conducted under the hypothesis of a static economic equilibrium, whereas in practice, regulations interact together with more complex dynamics. In this way, *ex post* evaluations complete the regulatory cycle that begins with *ex ante* assessment of proposals and proceeds to implementation and administration.

Regulatory offsetting rules across the OECD and the EU

Summary points

- More than one-third of OECD member countries and the European Union use ‘stock-flow linkage’ rules, such as one-in-one-out approaches, when developing new regulations, however compared to 2017, there has been a small decrease in the number of countries doing so. Across the European Union, the uptake of this approach is less frequent than across the OECD.
- One-fifth of OECD countries carry out independent evaluations of the efficiency and effectiveness of the ‘stock-flow linkage’ approaches and publish the results of these findings. Compared to 2017, there has been a slight increase in the uptake of the independent evaluations among OECD countries.

When the stock of regulations builds up over time and it is left unchecked, it can create cumulative burdens on business and citizens. Common forms of regulatory stock management are embedding review clauses and regulatory offset arrangements such as one-in-one-out (or one-in-x-out) rule. Regulatory offset rules and burden reduction targets, need to include a requirement that regulations slated for removal, if still “active”, first undergo some form of assessment as to their worth.

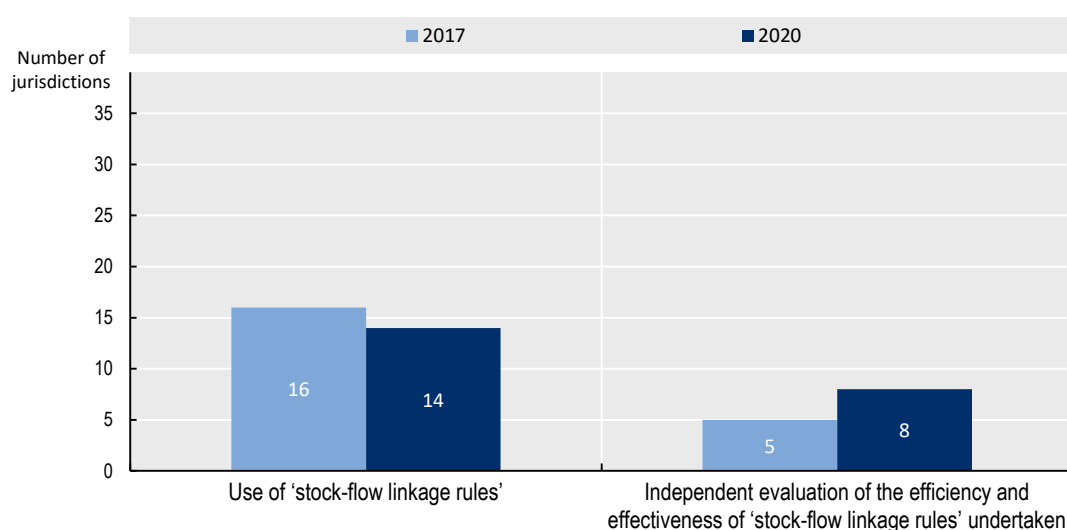
Formalised stock-flow rules that require the removal of existing regulations when introducing new ones, or that require agencies to reduce “red tape burdens” by certain amounts annually, employ simple decision rules to contain aggregate costs of administration and compliance. Such approaches have been widely used across the OECD. These have often taken the form of annual bundled “clean-up” regulations, and have also been introduced at the subnational levels of government in some countries (OECD, 2020^[3]). Burden reduction programs and regulatory offsets can act as an important complement to *ex post* reviews, and they can also provide the motivation to evaluate the worth of regulations in place. However, to achieve the desired effects, both costs and benefits need to be considered before changes are made. Therefore, such assessments should be proportionate so as not to negate the advantages of one-in-one-out rules in terms of administrative costs. It would be sufficient to be able to conclude that removing the regulation would be likely to yield a net benefit.

The one-in-one-out rule, suggests that individual regulatory agencies should not be able to adopt a new regulation without simultaneously abolishing an existing regulation, thus leading to no net change in the overall number of implemented regulations. The key rationale of the one-in-one-out approach is that regulation would no longer be a "free good", which would force regulators to optimise regulatory choices, trading off between different possibilities (Trnka and Thuerer, 2019^[7]; Deighton-Smith, 2011^[9]).

Above a third of OECD countries and the European Union use 'stock-flow linkage rules' when introducing new regulations (Figure 1). Since 2017 there has been a slight decrease in the number of countries using such programmes, with **Austria** and **Denmark** no longer using 'stock-flow linkages'. Across the EU, the use of one-in-one-out rules is less common than across the OECD countries, since a fourth of EU Member States use them.

A fifth of OECD member countries carry out independent evaluations of the efficiency and effectiveness of these programmes, as well as publish the results of these findings (Figure 1). Compared to 2017, **Austria**, **Finland** and **Mexico** now carry out independent evaluations of "stock-flow linkages" and publish the results of such assessments. For examples on the use of "stock-flow linkage rules" in selected OECD countries see Box 2.

Figure 1. Above a third of OECD countries use 'stock-flow linkage rules' and an increasing number of countries carry out independent evaluations of their efficiency



Note: Data are based on 38 OECD member countries and the European Union.

Source: Indicators of Regulatory Policy and Governance (iREG) Surveys 2017 and 2021.

Box 2. Examples of 'stock-flow linkage rules' in selected OECD countries

In **Canada**, the "One for One" rule requires departments and agencies to:

- Offset new administrative burden costs imposed on business as a result of a regulatory change by removing an equal amount of administrative burden costs from their existing stock of regulations; and

- Remove an existing regulation every time a new one imposing new administrative burden costs on business is enacted.

Similar to the “One for One” rule, departments in **France** are required to both offset the increase in costs to businesses and to remove (or, if not possible, simplify) an existing regulation when a new one is enacted, while also considering the costs to local governments and citizens. In 2017, the rule was extended into the two-for-one policy (“maîtrise du flux des textes réglementaires”). The offsetting obligation was doubled with the intent to impose greater control of the flow of regulatory texts on the different ministerial departments, since the original approach had not achieved the desired results.

In **Germany** and **Korea**, a simple “one for one” offsetting rule is used by regulators. This approach requires that an increase in regulatory costs (or their subcategory, e.g. administrative costs for businesses) by a certain amount must be offset by a reduction of an equivalent value of costs.

In **the UK**, the originally introduced one-in-one-out (later one-in-two-out and one-in-three-out rule) regulatory offsetting approach has been discontinued in the 2017 Parliament with the focus shifting to promoting more efficient regulation, backed by high-quality evidence, and supporting transparency and accountability for the costs and benefits of regulation to business and wider society.

Mexico eased its offsetting obligations over time. A year after the introduction of the presidential decree “2x1” in 2017, the approach was changed to a simple “one for one” policy by the law on regulatory improvement. The rule requires departments and agencies to offset an increase in direct compliance costs to individuals caused by a newly introduced regulation by repealing one regulation from the same economic sector with an equivalent value of costs

Source: Trnka, and Thuerer (2019^[7]); Gouvernement de la République Française, 2017; Gouvernement de la République Française, 2013; Congreso general de los Estados Unidos Mexicanos, 2018.

OECD member countries would benefit from taking up stock-flow linkage rules (such as one-in x-out) as they can also provide an incentive and discipline to policy makers for keeping regulatory costs in check. In addition, in order to be effective, such regimes should motivate proper evaluation of existing regulations proposed for removal including assessments against their objectives and broader public policy objectives (OECD, 2018^[6]). For country examples on the impacts of one-in-x-out (OIXO) rules see Box 3. In order to measure the impacts of OIXO on economic efficiency, counterfactual of the costs and benefits of regulation would need to be known, or at least the counterfactual of the cost of regulation without OIXO. However, the counterfactuals cannot be easily estimated due to the difficulty of measuring regulatory costs in the absence of OIXO (Hahn and Renda, 2017^[10]; Trnka and Thuerer, 2019^[7]). In evaluating their programmes, most countries therefore use only the indicator of a change in regulatory/administrative costs, while they usually do not take into account the benefits. Also, a reduction in regulatory cost measured might not necessarily improve broader measures, such as economic efficiency, as in many cases, reductions in administrative burdens can generate increases in enforcement costs, compliance costs, or reductions of regulatory benefits (OECD, 2010^[11]).

Box 3. The impacts of one-in x-out rules in selected OECD countries

In **Canada**, the “One for One” rule has resulted in CAD\$30.3 million in annual cost savings from its implementation in 2012-2013 to the end of the 2017-2018 fiscal year. In addition, it led to a total of 131 regulatory titles being removed.

In the **United Kingdom**, since the start of 2011 and up until July 2015, under “one-in, one-out” and “one-in, two-out”, the UK Government reduced the annual cost to business of domestic regulation by almost 2.2 billion GBP. The UK Better Regulation Executive estimated that in the first period from 8 May 2015 to 26 May 2016, the “net deregulation delivered so far” is 885 million GBP. In 2016, the UK National Audit Office carried out a review of the programme and concluded that while the system has successfully raised the profile of regulatory costs imposed on businesses across government, due to exemptions, the bulk of regulatory costs on business had not been included in the scope of the target. In addition, the review found that departments had not done enough to appraise the wider impacts of their decisions, or to evaluate their effects, which can harm the credibility of claimed savings and reduce the opportunities to learn from past experience.

In **Germany**, the Federal Government adopted a total of 53 proposals to which the “bureaucracy brake” applied in 2015. Of these proposals, 26 led to an increase in compliance costs, the total increase being 457 million EUR. However, the government estimates that 27 new proposals saved about 1.4 billion EUR, resulting in 958 million EUR in total estimated benefit of the one-in, one-out rule. However, in Germany, the cost savings are not seen as the main benefit of the rule, but rather its communication function. By linking the responsibility of calculating costs and finding offsets to the “owner” of the regulation, the rule raises regulators’ awareness of the issue of compliance costs.

The United States Office of Management and Budget (OMB) noted in the fall 2018 Unified Agenda of Regulatory and Deregulatory Actions, that during the period, agencies continued to comply with the one-in, two-out requirement – in particular, 14 significant regulations have been offset by 57 significant deregulatory actions, effectively resulting in a four-to-one ratio of regulatory offsets. OMB declared annual savings of 23 billion USD in 2018 as a result. However, for purposes of the one-in, two-out requirement, some of the offsets had not yet at the time of measurement caused any costs

Source: Trnka and Thuerer (2019^[7]).

Despite the fact that stock-flow linkage rules have been implemented in many countries, they have been criticised, mainly by academics as well as civil society organisations. Many of these critiques mentioned the fact that these approaches may lead to too much focus only on regulatory costs and to a danger that regulations which might be costly but still beneficial for the society will be abolished. It is important to note that regulatory offsetting might not be suitable for countries that do not yet have well-established procedures for regulatory impact assessment or have weak regulatory management systems. For developing or emerging economies still building or reforming their regulatory frameworks, such an approach may risk misleading regulators towards solutions that will not be beneficial for the society. In addition, regulatory offsetting should not exist in isolation from other regulatory policies, such as RIA, systematic *ex post* reviews of existing regulations, stakeholder engagement policies, etc. It should be implemented as a complement to these tools, not as a standalone. Its use is mostly in strengthened communication with regulatory agencies and highlighting regulatory costs (Trnka and Thuerer, 2019^[7]).

The use of sunseting and automatic review clauses

Summary points

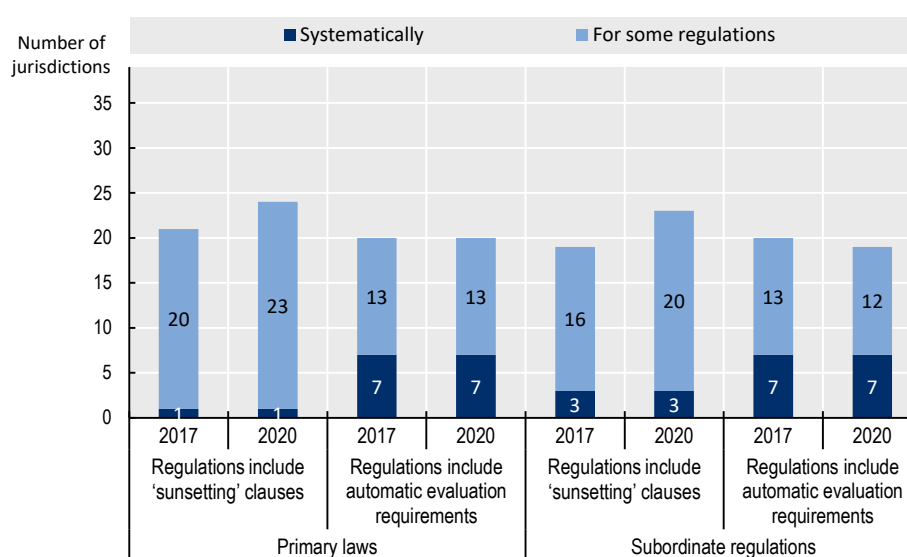
- Around two-thirds of OECD member countries and the European Union use sunset clauses, while about half of countries have automatic evaluation requirements in place. Across the European Union, the use of sunset and automatic review clauses is less common than across the OECD, with above half of EU Member States using sunset arrangements for some primary laws and about 40 per cent of EU Member States using automatic evaluations. Compared to 2017, there has been a small increase in the number of countries using sunset clauses for both primary laws and subordinate regulations.
- OECD members would benefit from a greater uptake of automatic review and sunset clauses, especially for regulations that at the time of adoption were subject to significant uncertainty. Moreover, they can contribute to better discipline on lawmakers and improve the transparency by signalling to stakeholders that there will be opportunities to provide input on the quality of the existing regulation.

The requirement to review laws and regulations has been formalised by some OECD member countries through the use of automatic review clauses or sunset clauses, respectively. Embedded review clauses can be ad hoc or systematic. The former are usually reserved for policies with substantive economy-wide impacts that are highly uncertain at the time of implementation and therefore warrant *ex post* evaluation to better understand whether the assumptions at the time the rule was made remain valid. The latter usually take the form of either sunset or automatic evaluation clauses. Sunset clauses provide that a regulation will cease to have effect at a specified future date, unless it is either amended or remade. Automatic evaluation clauses provide a specified date by which either a review of the regulation needs to have commenced or concluded by.

Despite the opportunity offered by automatic review and sunset clauses, they are not always used to the fullest extent by OECD countries, even when governments regulate in areas subject to significant uncertainty at the time when laws are made. They could act as an important discipline on lawmakers and at the same time transparently signal to stakeholders that there will be future opportunities to provide input on the retention, amendment, or removal of certain aspects of the regulation.

The use of sunset clauses is more common across OECD member countries than the use of automatic evaluation clauses, although both are usually implemented on an *ad hoc* basis. Less than two-thirds of OECD countries and the European Union use sunseting arrangements, while about half of countries have automatic evaluation requirements in place. Across the European Union, the use of sunset and automatic review clauses is less common, with a little over half of the EU Member States using sunset arrangements for some primary laws, and about 40 per cent using automatic evaluations. Compared to 2017 there has been a slight increase in the number of countries using sunset clauses for both primary laws and subordinate regulations (Figure 2). Both of these clauses are important to ensure that the flow of regulations are subject to some sort of review in order to determine that they remain appropriate over time (OECD, 2020^[3]).

Figure 2. More than half of the OECD members include sunset clauses while automatic evaluation requirements are less common



Note: Data are based on 38 OECD member countries and the European Union.

Source: Indicators of Regulatory Policy and Governance (iREG) Surveys 2017 and 2021.

Most of the countries using sunset arrangements do not have specific periods within which a regulation must sunset. However, in **France, Germany and Korea**, regulations with sunset clauses have to be reviewed within 3 to 5 years, in **Australia** subordinate regulations have to sunset after 10 years and in **the UK** no later than after 7 years.

A mix of different approaches to evaluation will generally be required, depending on the context, including reviews of regulations triggered by sunset clauses and statutory requirements, and ad hoc reviews. In addition, to identify options for more broad-ranging reforms, comprehensive in-depth reviews or programme reviews that look at the mix of regulations and policy instruments in certain policy areas or sectors can be used. Evaluations triggered by sunset or automatic review clauses might also be usefully packaged if they address similar or overlapping issues. Finally, ongoing ‘management’ of regulations, e.g. through stock-flow linkage rules or red tape reduction targets, can achieve significant reductions in administrative burdens (OECD, 2018^[6]).

Use of ex post evaluations to review existing stock of regulation

Summary points

- Despite the fact that potential gains from “stock” reforms are large, OECD members lag behind when it comes to *ex post* evaluations. Some minor improvements have been made with more members beginning to formally require *ex post* evaluations to be undertaken, and a few countries have introduced innovative ways of embedding *ex post* evaluations into the regulatory lifecycle. However, overall many OECD members are still lacking in many areas of *ex post* evaluations – with very slow progress since 2014.
- A “set and forget” mentality to rule making prevails across many OECD countries and EU Member States. A fundamental issue is that governments simply do not know whether rules are working as intended. Less than one-quarter of OECD members systematically assess

whether regulations achieve their objectives. Across the European Union, the evaluation the policy objectives is less systematic than across the OECD.

- Governments would benefit from incorporating reviewing rules as a part of their better regulation toolkits. It would enable the earlier identification of potential problems. It also provides an opportunity to share experiences so as to avoid costly mistakes in the future and to build upon successes of the past.
- Countries would also benefit from using big data in the regulatory process as it can help regulators link the *ex ante* impact assessment and *ex post* evaluation and improve the inspections and enforcement of existing regulations.

Ex post evaluations help to assess whether laws are working as originally intended and, if not, to propose improvements. Left unchecked, the stock of laws will continue to grow unabated creating unnecessary red tape for citizens and businesses. Moreover, evaluations operate as an important check to ensure that laws are still justified and in the public interest. In turn, this helps to build community support for laws and boost trust in government action as it increases the level of transparency and accountability (OECD, 2021^[12]).

Ex post assessments of regulatory performance in practice involve a symmetry with *ex ante* assessments: through verifying that stated objectives have actually been met, determining whether there have been any unforeseen or unintended consequences, and considering whether alternative approaches could have done better. This requires clarity about the intended objectives and/or outcomes sought. It also needs data requirements to be embedded such that outcomes can later be measured (OECD, 2020^[3]).

Generally, the level of evaluations across OECD countries remains low despite their importance in ensuring that regulations continue to improve societal wellbeing. Only one-third of OECD countries have systematic requirements in place to conduct *ex post* evaluations, with the number essentially unchanged since 2014. This represents a significant weakness as committed leadership is crucial to a well-functioning *ex post* evaluation system. To some extent this is unsurprising – governments are often concerned about the political and economic consequences of being shown to have made “bad” decisions previously. Yet such approach represents portrays an unduly narrow view of the benefits that a sound evaluation system provides. Evaluations may incidentally provide opportunities to learn from past mistakes and they should be viewed as an opportunity to enhance the certainty and stability of the existing regulatory framework, foster greater competitiveness, and improve wellbeing (OECD, 2021^[12]).

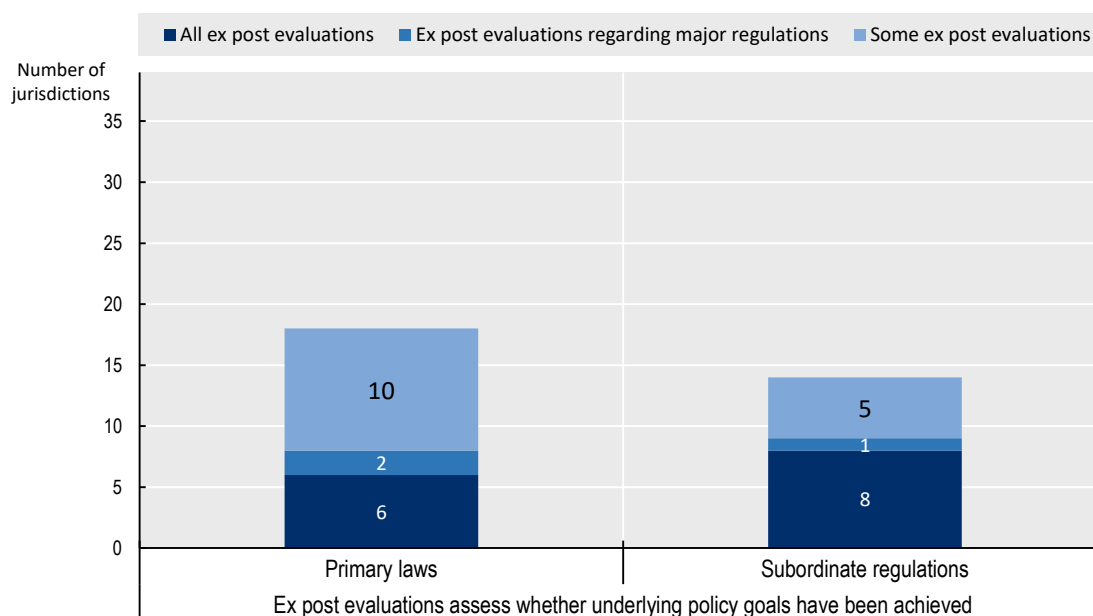
Below a quarter of OECD countries and the European Union mandate that periodic *ex post* evaluations are systematically undertaken for primary laws, while for subordinate regulations, approximately a quarter of OECD countries and the European Union systematically undertake periodic evaluations. In addition, a third of OECD member countries have mandatory periodic *ex post* evaluations in place for both primary laws and subordinate regulations.

Ex post reviews should however go beyond a “costing exercise” to focus on whether the regulation’s underlying policy objectives have been achieved. In addition, evaluations should take into account any side-effects of regulations and include a consideration of other, possibly better, regulatory alternatives (OECD, 2018^[6]).

In about a fifth of OECD member countries and the European Union *ex post* evaluations of primary laws are systematically required to assess whether the underlying policy goals of regulations have been achieved, while for subordinate regulations, slightly more OECD countries have such requirements systematically in place. In addition, in a quarter of countries, some *ex post* evaluations are required to assess whether primary laws at hand have achieved their objectives (Figure 3). However, among the European Union Member States, the requirement to assess whether the underlying regulatory goals have been achieved is less systematic than across the OECD countries. Four EU Member States systematically

assesses whether the policy objectives were achieved and further nine EU Member States do so for some *ex post* evaluations.

Figure 3. About half of OECD members conduct *ex post* evaluations that assess whether the underlying policy goals were achieved



Note: Data are based on 38 OECD member countries and the European Union.

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

Assessing whether regulations have achieved their objectives ought to be at the heart of any evaluation. It is critical to learn if laws have worked as originally intended, and if not, to understand the reason or reasons why not. OECD member countries would benefit from engaging more in these practices as it can help them to determine whether laws are delivering good outcomes in practice for citizens and businesses.

It is not only important that the impacts of existing regulations are assessed on citizens, but also other important players in the economy, mainly businesses. Small and medium-sized enterprises (SMEs) are the most common form of business in most OECD countries, as they account for nearly 99 per cent of existing firms. These firms play a key role in the economy as they contribute to the societal well-being and prosperity at the local and global level. Navigating the legal environment and complying with regulations tend to be cumbersome for SMEs. The 2012 Recommendation acknowledged these specific circumstances for SMEs and indicated that in designing regulations, governments need to be aware of the incidence of regulations on businesses and the disproportionate impacts they can have on small to medium-sized enterprises and micro businesses (OECD, 2012^[5]). In 2020, the OECD undertook a comparative study that examined to what extent and how OECD countries were assessing the impact of regulations on SMEs. The study found that one of the forming ways of the assessment of impacts on SMEs was done by assessing the distribution of costs, benefits and other impacts of the existing regulations (competition, innovation, finance, etc.), with respect to previously identified SMEs groups (OECD, forthcoming^[13]).

There are considerable challenges, both technical and political, in establishing an effective framework for *ex post* evaluation. In order to ensure that the *ex post* evaluation are of high quality, governments need to invest in the required skills and capacities within the public sector. A number of academic disciplines are

potentially needed, depending on the area of regulation being reviewed, but the key skills in common relate to the identification and measurement of impacts, whether social, environmental or economic. In addition, qualitative methods can help complement quantitative ones (OECD, 2018^[6]).

The *2012 OECD Recommendation on Regulatory Policy and Governance* (OECD, 2012^[5]) states that countries should integrate regulatory impact assessment into the early stages of the policy process and requires that they should carry out systematic reviews of the stock of significant regulation. The link between *ex ante* impact assessment and *ex post* evaluation relies heavily on information, i.e., data. The entities that are generally responsible for data collection are regulators and businesses. The introduction of big data to the public sector has the potential to revolutionise regulatory policy. One of the greatest benefits of using big data is the improvement of inspections and enforcement. This in turn helps to save both public and private resources by introducing and improving risk-based approaches to regulatory compliance and enforcement. For *ex post* evaluations, big data enables analysts to view market participants' behaviour through a number of dimensions, for instance temporal and spatial. This may help to identify particular areas where increased regulatory focus is needed. It may in turn assist in the improvement of regulatory design over time, as policymakers have an improved evidence-base upon which to make policy decisions. Despite the broad ranging benefits, big data currently presents a number of challenges and opportunities to the public sector, e.g., lack of infrastructure or privacy laws in the public sector that represent a challenge to information sharing (OECD, 2019^[14]).

The use of stakeholder engagement to improve regulations

Summary points

- The development of laws would benefit from a more integrated approach to stakeholder engagement. Only a few OECD countries and EU Member States consult systematically at an earlier stage of policy development, to define policy problems and consider potential solutions. Most OECD members consult with stakeholders once a draft regulatory proposal exists.
- Stakeholders can help improve policies if they are better informed about upcoming consultations and evaluations. Doing so enables stakeholders to prepare for consultations by gathering data on the impacts of the regulation and experiences to assist policy makers to determine whether rules have worked as originally intended. About a third of OECD members inform the public in advance about at least some of their forthcoming consultations. However, informing stakeholders in advance about planned *ex post* evaluations is less common across OECD countries.
- More than one-third of OECD countries and the European Union systematically engage stakeholders in *ex post* evaluations, and about half of countries do so for some *ex post* evaluations. Since 2017, the number of countries actively engaging relevant parties in evaluations has increased slightly. In most countries, the stage at which stakeholders are engaged in *ex post* assessments depends on the regulation that is being evaluated.
- The majority of OECD countries and EU Member States use mechanisms through which the public can make recommendations and provide feedback on existing regulations. This can help countries to more easily identify laws that are not working as intended or pose excess burden of regulated parties.

Stakeholders should have a right to express their views as part of the process of developing, implementing, and reviewing regulations. Stakeholder engagement is a critical enabler of improved regulatory quality. Citizens, businesses and other parties can bring their own perspectives and learnt experiences to help shape solutions and to avoid costly mistakes. In addition, stakeholders have a potential wealth of data on

actual regulatory impacts incurred, thus providing governments with valuable information to help improve estimations of likely impacts of policy proposals. Aside from direct information, involving citizens and businesses in the regulatory process helps to garner trust amongst the regulated community, create buy-in and support for new initiatives, and also to boost compliance with resultant rules. In particular, when stakeholders feel that their views expressed in consultations were considered, they received an explanation of what happened with their comments, and they feel treated with respect (Lind and Arndt, 2016^[15]). On the other hand, inadequate consultation without any actual interest in the views of stakeholders because a decision has already been made, or failure to demonstrate that consultation comments have been considered may have the opposite effect.

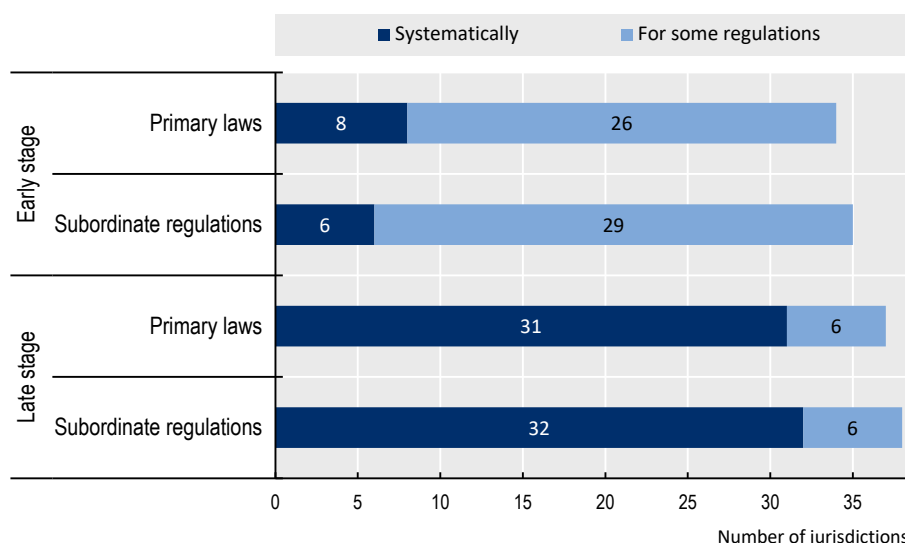
Ensuring that stakeholders are adequately consulted has been formally recognised by the OECD. The OECD 2012 Recommendation on Regulatory Policy and Governance (2012^[5]) formally recognises the importance of adequate stakeholder engagement, calling on member countries to “adhere to principles of open 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 and accessible opportunities 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^[5]).

Administrations need to identify in advance, preferably before the regulations are drafted, parties that will be affected by regulations and how. Any groups of stakeholders which might be disproportionately affected should be identified and also consulted with. It is the government’s responsibility to give all stakeholder groups an equal opportunity to express their views, which may entail actively reaching out to those who might not have the necessary resources for getting engaged or might not be sufficiently informed on the opportunities to be consulted.

To make sure that stakeholders provide meaningful input to the regulation-making process, policy makers need to engage with them regularly throughout the regulatory cycle and sufficiently early. Regular engagement with stakeholders (i.e., citizens, businesses, NGOs, representatives of certain groups of the society) is essential for creating an environment of mutual trust. Discussion fora where views on the quality and performance of the regulatory framework are regularly exchanged help administrations to understand the needs of the regulated subjects but also to explain the purpose of existing or new regulations. In some cases, these platforms provide not just an opportunity for stakeholders to comment on the quality of regulations and regulatory burdens but also to jointly look for solutions or, if necessary, for administrations to explain why certain solutions cannot be accepted. This helps support mutual understanding of what the government is trying to achieve through regulations and potentially increase trust of stakeholders in government regulations and therefore increase compliance with regulatory measures and achieving regulatory outcomes (OECD, 2021^[11]).

OECD member countries as well as EU Member States generally consult with stakeholders only once a law or regulation has been drafted. This is a crucially important stage, as stakeholders can see what the proposed rule would look like and mean for them in practice. But governments also have opportunities to engage stakeholders earlier in the process to gather data and ideas on possible solutions to identified problems. One-fifth of OECD member countries and the European Union systematically consult stakeholders at the early stage of policy development, when possible solutions are being identified, and two-thirds of countries do so for some regulations. On the other hand, above three-quarters of countries systematically engage stakeholders at the late stage, once the law or regulation has been drafted (Figure 4). Across the European Union, stakeholder consultations happen less systematically at the early stage than across the OECD countries, however, late stage consultations happen more systematically across the EU Member States.

Figure 4. Most OECD member countries tend to systematically engage with stakeholders once there is a draft regulation



Note: Data are based on 38 OECD member countries and the European Union.

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

Policy makers need to facilitate participation and obtain public feedback during the policy making process. A way of enabling the public to participate includes informing stakeholders in advance of upcoming consultations and once they have started, granting them enough time to provide their feedback. Providing advanced notice to stakeholders enables them to gather data on actual impacts and experiences to assist policy makers in determining whether rules have worked as originally intended.

Informing stakeholders in advance about forthcoming consultations as well as evaluations is rare across OECD member countries. Around two-thirds of OECD members publish a list of primary laws that they plan to prepare or modify; while close to half do so for subordinate regulations. However, only around a third of OECD members inform the public in advance about at least some of their forthcoming consultations. Moreover, informing stakeholders about forthcoming *ex post* evaluations is also less common – about a third of OECD countries and the European Union inform stakeholders in advance of planned *ex post* evaluations.

Consultation with stakeholders is not only crucial during the development stages of a law or regulation, but also during the evaluation process of existing regulations. Engaging with regulated parties can help to make sure evaluations are targeted appropriately and are informed by the real-world impact of regulations, and it also helps to ensure that recommendations for improvement are practical and user-centred. At the same time, those responsible for evaluation need to account for the diversity of knowledge, resources and level of organisation of different stakeholder groups (OECD, 2018^[6]). For instance, the European Commission has a unique approach to engaging stakeholders in the simplification of existing regulations through its Fit for Future platform (Box 4).

Box 4. The European Commission's Fit for Future platform

The regulatory fitness and performance programme (REFIT) is part of the European Commission's better regulation agenda. The REFIT programme aims to ensure that implemented EU laws achieve their intended benefits for European citizens and businesses by cutting red tape and making EU laws more targeted and easier to follow.

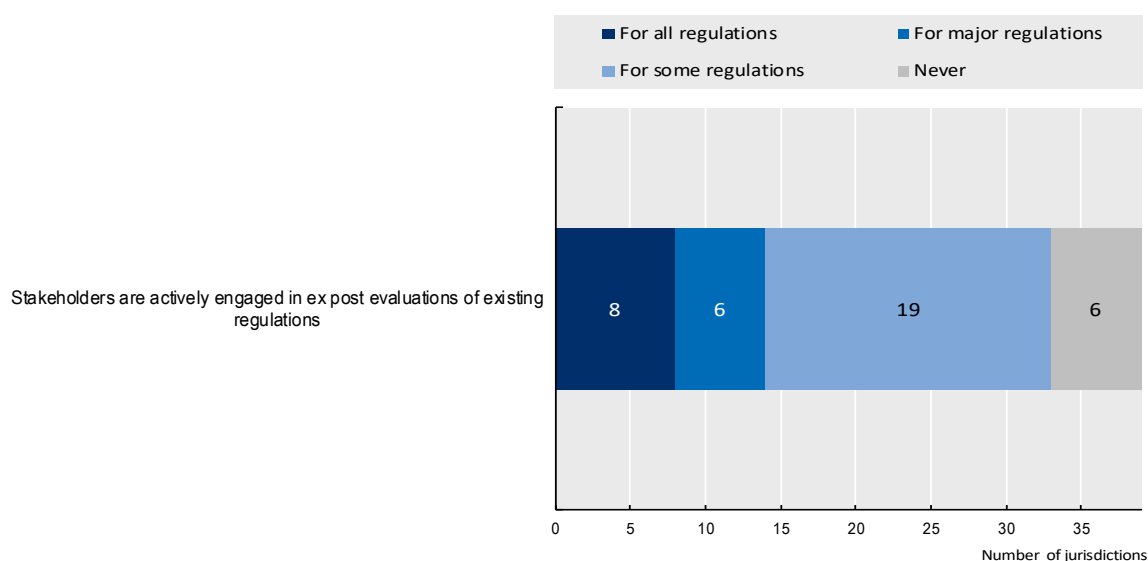
The Fit for Future platform builds on the experience with the REFIT programme, and it is a high-level expert group composed of Member States, the Committee of the Regions, the European Economic and Social Committee and stakeholders representing common interests in various sectors. The Fit for Future platform helps the European Commission to simplify existing legislation, reduce regulatory burdens and ensure that EU legislation is fit for the future.

Stakeholders can participate in the European Commission's Call for evidence by providing feedback on the simplification and modernisation (including digitalisation) of existing regulations through the "Have Your Say: Simplify!" portal.

Source: European Commission (2021_[16]) and European Commission (2021_[17]).

The majority of OECD countries actively engage stakeholders in *ex post* evaluations. More than one-third of OECD members and the European Union engage with stakeholders systematically, and about half of countries do so for some regulations (Figure 4). Compared to 2017, there has been a slight increase in the number of countries actively engaging with stakeholders, with **Japan** and **Latvia** now engaging relevant parties in the evaluations of some existing regulations. In most countries, the stage at which stakeholders engagement takes place depends on the regulation that is being evaluated. Box 5 provides information on how OECD countries involve affected parties in *ex post* evaluations.

Figure 5. Most of OECD countries actively engage stakeholders in evaluations of regulations



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

Box 5. Selected OECD members' stakeholder engagement practices during *ex post* evaluations

In accordance with the better practice consultation practices for Regulatory Impact Assessment and Post Implementation Reviews, **Australian** stakeholders are typically engaged in *ex post* evaluations by review teams undertaking ad hoc reviews on sectors or specific policy areas.

In **Italy**, stakeholders are consulted twice: first, early in the planning stage and then during the evaluation process. As for reviews of a large number of regulations, stakeholders are also involved in defining the priorities to simplify administrative and regulatory burdens and monitoring the implementation of the simplification measures.

In **Korea**, any business or member of the public can file a petition against the government through the Regulatory Reform Sinmungo regarding the burdens imposed by the existing regulations. A regulatory petition can be filed at any time of the year, and the responsible agency has the obligation to respond to the petitioner within a given time period either by revising the regulatory provisions in dispute or providing reasonable grounds for refusal to accept the petition. In addition, when re-evaluating the existing regulations that contain sunset clauses, the central administrative agency consults with stakeholders to assess the necessity, propriety, and relevance of the regulation.

According to the *ex post* RIA guidelines in **Mexico**, stakeholders who are affected by the concerned regulation have to be consulted regarding its implementation, effects, effectiveness, and efficiency. Additionally, once the regulator has completed its *ex post* RIA, CONAMER proceeds to review its content within a period of 30 business days. During the review period, stakeholders can send comments on the content of the review, which will be analysed and included in the final *ex post* evaluation report carried out by CONAMER.

In **Sweden**, experts from business organisations and other interest groups can be appointed as experts in a committee of inquiry established by the responsible ministry to carry out *ex post* evaluation of a regulation. Referral bodies and stakeholders are also invited to provide comments on the final report, which are then dealt with by the responsible ministry in the continuous work within the Government Offices.

In the **United Kingdom**, the post implementation review (PIR) principles (applicable to both primary and secondary legislation) state that monitoring and evaluation plans should be built in at the start of the policy process to monitor specific elements of the policy. This helps Departments manage their resources to produce higher quality PIRs, by ensuring they can collect the data they require for the evaluation throughout the life of the policy and enable the measuring of the success of the policy when a PIR is written.

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

Two-thirds of OECD members and the European Union have ongoing mechanisms in place through which the public can make recommendations to modify regulations in place or provide feedback on their functioning. Across the European Union, the use of such mechanisms is slightly lower than across the OECD, with above 60 per cent of EU Member States having mechanisms in place via which stakeholders can provide comments on existing regulations. Enabling citizens and businesses to leave recommendations and feedback on existing regulations can help regulators identify regulations that are not working well or that pose excess burden on regulated parties, but on the other hand also identify regulations that are working particularly well.

International co-operation to improve regulations

Summary points

- Four EU Member States report having systematic mechanisms in place for sharing or exchanging information and evidence on potential impacts of EU directives and regulations with other EU Member States and the European Commission. EU Member States would benefit from engaging with other EU Member States, as it would allow them to learn from each other, improve their impact assessments and make better decisions.
- More than half of EU Member States review the implementation of the international instruments that they adhere to, but in most EU Member States, this is not done on a systematic basis. Across the OECD, less than one-fifth of countries systematically review international instruments that they adhere to and a further 16 countries do so sometimes.
- Despite the potential gains from sharing information on evaluations of international laws and regulations that countries adhere to with international organisations and partners, data shows that only eight OECD members and the European Union share the results of such reviews with relevant international organisations.

Policy makers do not operate in silos and thus need to collaborate with their neighbours and partners, especially when tackling global challenges faced by governments. This is in particular true in the context of the European Union, where Member States should collaborate with their counterparts in other EU Member States when developing domestic legislation and when transposing EU directives. Collaborating with parties outside national boundaries is an essential feature of embedding international regulatory co-operation (IRC) in domestic rule making, as highlighted in the *OECD Best Practice Principles on International Regulatory Co-operation* (OECD, 2021^[18]).

Appropriate IRC can help manage cross-border risks, promote work-sharing and pooling of resources across governments for effective regulatory responses, reduce costs of production and facilitate trade. IRC is therefore an important building block of structural regulatory reform to embed resilience in regulatory frameworks. This has been reaffirmed during the COVID-19 pandemic, during which momentum was high to ensure an effective approach to face the pandemic as well as its economic and social consequences, and the rationale for embedding international co-operation and impacts as fundamental pillars of regulation to address the crisis and its aftermaths and prevent future ones became undeniable (OECD, 2021^[11]).

In the context of the European Union, collaboration and evidence exchange with other EU Member States can be a relevant practice during the development, negotiation, or transposition of EU legislative acts. Member States would benefit from sharing information on the impacts of EU legislation, as it would allow them to learn from each other, improve their impact assessments and better inform their decision making. Particularly in light of the often-limited time before negotiation takes place, short deadlines might prompt EU Member States to partner to collect or to utilise evidence from one another when preparing their national position in the negotiation phase or when shaping the transposition of EU directives (Radaelli, Dunlop and Allio, unpublished^[19]). Similarly, EU Member States can use other Member States' RIAs to supplement their own analysis in addition to the European Commission's, when transposing EU directives into domestic laws.

EU Member States report not engaging systematically with each other despite the potential gains from collaboration during the negotiation and transposition of EU legislative acts. Only six EU Member States report using information from the RIA conducted by other EU Member States when transposing a directive and this appears to be usually done on an ad-hoc basis.

EU Member States can also work more closely together when reviewing the already implemented EU directives and regulations. Sharing information can enable them to more easily identify and assess the impacts of the regulations in place and assess whether they are working as intended. Given that the vast majority of EU Member States have undertaken some evaluations, coupled with the evaluations of the European Commission, there is an available evidence base that can be help to improve the rules of both Member States and the European Union more generally.

Across the OECD, the main type of *ex post* evaluations undertaken by countries are principle-based reviews. Three-quarters of OECD members and the European Union have undertaken principle-based reviews in the past 5 years. In around a quarter of these countries, a guiding principle for the review was on overlaps between local, regional and federal regulation; and in one-fifth of the countries that have carried out principle-based reviews in the past 5 years, the guiding principle was based on compliance with international standards.

The opportunity to learn from evaluations is not limited to the policy ministry conducting the review. Results can be widely applicable. Part of the learning process is to integrate results into future policy making and in any subsequent RIAs. Yet, currently sharing results beyond an individual jurisdiction is rare across the EU Member States. Despite the fact that around 85 per cent of EU Member States undertook at least one *ex post* evaluation in the past five years, less than 15 per cent shared their results with the European Commission where the evaluation involved areas of EU legislative competencies. However, EU Member States that do not share the results of their *ex post* evaluations of EU directives/regulations with the European Commission, in most cases, do not do so because they do not have EU directive review mechanisms, or because evaluations are rare (OECD, 2022^[21]).

It is noteworthy that more than half of EU Member States review the implementation of the international instruments that they adhere to, but in the vast majority of cases, this is not done systematically. Across the OECD, below a fifth of OECD countries and the European Union systematically review international instruments that they adhere to and further 16 OECD countries do so sometimes. That said, above two-fifths of OECD countries do not review international instruments that they have implemented. Despite the potential gains from sharing information with international organisations and partners, data shows that only eight OECD members and the European Union share the results of such reviews with the relevant international organisation, and most of these countries, except **Mexico** and **Switzerland**, are EU Member States.

Sustainable development and regulatory policy

The 2030 Agenda for Sustainable Development was adopted in 2015 by all the members of the United Nations (OECD, 2022^[20]). The 2030 Agenda highlights 112 targets, which fall under the sustainable development goals, for which performance can be measured. OECD countries have thus far met 10 goals (mainly those relating to securing basic needs and to the implementation of policy tools and frameworks) and are believed to be close to meeting a further 18 targets in the same areas. However, research carried out by the OECD notes that 21 SDGs appear to be far from being met, with none of these goals being on track to be achieved (OECD, 2022^[20]). In particular, OECD member countries have the scope to strengthen their efforts to ensure that no one is left behind, to restore trust in institutions and to limit pressures on the natural environment.

Trust and transparency are vital elements that help societies to absorb shocks and recover from them (OECD, 2021^[12]). However, available data show a long-term decrease in people's trust in institutions across developed countries. Trust in government reflects a mix of economic, social and political interactions between citizens and government. Available data pertaining to Goal 16 (i.e., Peace, justice and strong institutions) show that OECD members still have a lot of work to reach the targets relating to

areas that are critical for trust, including accessibility, accountability, transparency and diversity in public institutions (Targets 16.3, 16.6 and 16.7) (OECD, 2022^[20]).

While regulating in “normal times” is already difficult, global crises such as the COVID-19 pandemic have placed an even bigger priority on improving regulatory policy. Coupled with complex policy problems – such as climate change, inequality, or ageing populations – and headwinds of hyper partisanship, distrust in public institutions, and the pace of technological change, it is clear that new approaches are needed to how laws and rules are made and reviewed. A focus on more robust regulatory governance can help improve co-ordination and foster new ways of thinking, which can promote system-wide change and improve trust in government. In addition, better communication strategies, shifting from public consultations to stakeholder engagement and demonstrating good governance of regulatory institutions are essential to re-building trust in institutions (OECD, 2021^[1]).

In this regard, to improve the trust in public institutions and regulations, it is crucial that OECD countries and EU Member States work towards improving and broadening their use of better regulation tools. In addition, given that the 2030 Agenda for Sustainable Development is global by essence (OECD, 2022^[20]), countries should not work towards achieving these goals in silos, but they should also look beyond their borders and focus on the co-operation with their neighbours and partners.

Sound public policies grounded in evidence will be crucial for the achievement of the 2030 Agenda. By fully reflecting SDGs in the regulatory framework, governments can enhance public sector’s capacity to consistently formulate, implement, and monitor policies coherent with the 2030 Agenda for Sustainable Development. While embedding SDG considerations at the *ex ante* impact assessment stage is crucial for the development of new legislation positively impacting SDG achievement, conducting retrospective reviews through an SDG lens is equally important to ensure the existing stock of legislation is in line with the goals of the 2030 Agenda. Furthermore, engaging relevant stakeholders helps to ensure that the latest scientific insights regarding SDGs are reflected in policy making (OECD, 2021^[1]).

Discussion questions

- How can regulatory alignment and simplification be better assured across the EU shared regulatory area?
- How can we better incorporate stakeholder views so as to improve regulations?
- How can we improve compliance and simplification yet meet sustainable development objectives?
- To what extent have regulatory offsetting systems contributed to an improved regulatory environment?

References

- Deighton-Smith, R. (2011), *Rules for Regulatory Expenditures*. [9]
- European Commission (2021), *Better Regulation Guidelines*, https://ec.europa.eu/info/sites/default/files/swd2021_305_en.pdf. [16]
- European Commission (2021), *Better Regulation Toolbox*, https://ec.europa.eu/info/sites/default/files/br_toolbox-nov_2021_en_0.pdf. [17]
- Hahn, R. and A. Renda (2017), *Understanding Regulatory Innovation: The Political Economy of*, <https://techpolicyinstitute.org/wp-content/uploads/2017/08/Understanding-Regulatory-Innovation.pdf>. [10]
- Lind, E. and C. Arndt (2016), *Perceived Fairness and Regulatory Policy: A behavioural science perspective on government-citizen interactions*. [15]
- OECD (2022), *Better Regulation Practices across the European Union 2022*, <https://doi.org/10.1787/6e4b095d-en>. [2]
- OECD (2022), *Key findings and conference proceedings, 12th OECD Conference on Measuring Regulatory Performance: Agile regulatory oversight for the 21st century*. [4]
- OECD (2022), *The Short and Winding Road to 2030: Measuring Distance to the SDG Targets*, <https://doi.org/10.1787/af4b630d-en>. [20]
- OECD (2021), *Government at a Glance 2021*, <https://doi.org/10.1787/1c258f55-en>. [12]
- OECD (2021), *International Regulatory Co-operation, OECD Best Practice Principles for Regulatory Policy*, <https://doi.org/10.1787/5b28b589-en>. [18]
- OECD (2021), *OECD Regulatory Policy Outlook 2021*, <https://doi.org/10.1787/38b0fdb1-en>. [1]
- OECD (2020), *Improving Governance with Policy Evaluation: Lessons From Country Experiences, OECD Public Governance Reviews*, <https://doi.org/10.1787/89b1577d-en>. [8]
- OECD (2020), *Reviewing the Stock of Regulation, OECD Best Practice Principles for Regulatory Policy*, <https://doi.org/10.1787/1a8f33bc-en>. [3]
- OECD (2019), *Key Findings and Conference Proceedings, 10th Conference on Measuring Regulatory Performance: Measuring the implementation of regulation*, <https://www.oecd.org/gov/regulatory-policy/Proceeding-MRP-Mexico-June-2018.pdf>. [14]
- OECD (2018), *Key Findings and Conference Proceedings, 9th Conference on Measuring Regulatory Performance: Closing the regulatory cycle: effective ex post evaluation for improved policy outcomes, Lisbon, 20-21 June 2017*, <https://www.oecd.org/gov/regulatory-policy/Proceedings-9th-Conference-MRP.pdf>. [6]
- OECD (2012), *Recommendation of the Council on Regulatory Policy and Governance*, <https://doi.org/10.1787/9789264209022-en>. [5]
- OECD (2010), *Why Is Administrative Simplification So Complicated?: Looking beyond 2010.*, <https://doi.org/10.1787/9789264089754-en>. [11]
- OECD (forthcoming), *The SME Test: Taking SMEs into account when regulating. A* [13]

comparative study of SME tests in OECD countries.

Radaelli, C., C. Dunlop and L. Allio (unpublished), *Extending the OECD indicators of Regulatory Policy and Governance (iREG) to all Member States of the European Union..* [19]

Trnka, D. and Y. Thuerer (2019), “*One-In, X-Out: Regulatory offsetting in selected OECD countries*”, *OECD Regulatory Policy Working Papers*, No. 11, [7]
<https://doi.org/10.1787/67d71764-en>.