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INDICATORS OF REGULATORY CAPACITIES IN OECD COUNTRIES: PRELIMINARY ANALYSIS

**Meeting of the Regulatory Management and Reform Group, Public Management Committee,
OECD Headquarters, Château de la Muette, Paris, 29-30 June 1998**

This document provides preliminary analyses of the indicators of the quality of regulation making and regulatory review systems derived from Section 2 of the OECD Regulatory Indicators Questionnaire [SG/RR(98)2]. It will be discussed by the Regulatory Management and Reform Group of the Public Management Committee at its meeting on 29-30 June 1998 in Paris. Written comments on the draft are also welcome and should be sent to Rex Deighton-Smith at (33-1) 45 24 16 32; fax (33-1) 45 24 87 96; e-mail: rex.deighton.smith@oecd.org. by 31 July 1998.

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0.1 At this meeting, participants will discuss the preliminary results of Section 2 of the OECD indicator questionnaire dealing with the capacities of the government to assure high quality regulation. A number of possible comparative indicators will be presented on various aspects of government capacities.

0.2. Participants are asked to:

- **Discuss** whether and how the comparative indicators presented, and the indicators approach in general, can be useful in supporting regulatory reform efforts in individual countries by, for example, strengthening countries' capacities for self-assessment and the quality of the OECD's policy advice;
- **Suggest** refinements, improvements, and follow-up work to the indicators that would enhance their usefulness, comparability, and clarity. In particular, is it possible to supplement these formal process indicators with information about actual results?;
- **Agree** that, properly presented to minimize the risk of misinterpretation and in consultation with countries, these indicators can be made public through OECD reports.

INDICATORS OF REGULATORY CAPACITIES IN OECD COUNTRIES: PRELIMINARY ANALYSIS

1. Introduction

1. In March 1995, the OECD Council adopted its Recommendation on Improving the Quality of Government Regulation, incorporating the ten point OECD Reference Checklist for Regulatory Decision-Making. In the Recommendation, the Council asked the Public Management Committee to “present a report in three years’ time on the effectiveness of OECD Member countries in ensuring the quality of government regulation by integrating principles such as those contained in the Recommendation into administrative and management systems”.

2. In November 1996, the Secretariat presented its initial proposal to the PUMA Regulatory Management and Reform Group for a questionnaire to form the basis of such a report. Extensive suggestions for improvement of the questionnaire were received from the Group.

3. At their meeting at the OECD in May 1997, Ministers of OECD countries welcomed the *OECD Report on Regulatory Reform* and endorsed its principles. They agreed to work to implement its recommendations, which focus on how governments can improve their regulations and regulatory processes, and which reference the 1995 Checklist. They requested the OECD to conduct reviews of regulatory reform efforts in Member countries beginning in 1998, based in part on self-assessment, with the goal of contributing to the steady improvement of regulatory practices in Member countries. In order to use OECD resources most cost-effectively, the PUMA review was incorporated into the follow-up programme of country reviews and other multidisciplinary work on regulatory reform requested by Ministers. The OECD work is based on

- International comparisons, to provide objective bases for analysis and recommendations.
- Use of “best practices” and peer pressure to assist countries’ efforts to reform.
- A multidisciplinary approach to the analysis and suggested policy changes.

4. The Secretariat presented an altered version of the indicators questionnaire to a December 1997 meeting of the Regulatory Management and Reform Group. Further improvements suggested by the Group were incorporated, and the indicators questionnaire was circulated to the Group in January 1997 for final comment and approval. PUMA’s final indicators questionnaire was incorporated as Section 2 of the OECD-wide regulatory indicators questionnaire (see SG/RR(98)2FINAL), distributed to all Member countries in March 1998 for response. Thus, the indicators presented in this report are part of a dataset under construction as part of the OECD Secretariat’s horizontal work programme on regulatory reform. The full dataset and its applications will be discussed by the Economic Department’s Working Party No. 1 in Autumn 1998.

5. To date, 26 Member countries have replied to the PUMA questionnaire, representing a response rate of 89.7 percent. A questionnaire response has also been received from the European Commission. This paper presents the Secretariat’s initial analyses of the information received. Delegates will also note that some indicators were included in the draft country reviews of the Netherlands and the United States to support the points made in the reviews.

2. Role and weaknesses of comparative indicators

6. The comparative regulatory indicators drawn from the OECD survey will be used to improve the capacity of the OECD for cross-country comparisons of key aspects of regulatory reform. Indicators also will enhance the capacity of governments for self-assessment of progress in regulatory reform, since these indicators are based on measurements of what OECD countries have agreed are “good practices” for quality regulation. Indicators are intended to:

- support country reviews of regulatory reform by making reviews more systematic, comparable, transparent, and credible;
- support country self-assessment; and
- improve understanding of the links between regulatory structures and performance.

7. Yet indicators are by their nature partial representations of complex realities. It should be strongly emphasised that regulatory indicators cannot function, in themselves, as a “report card”. A good deal of expert judgement and contextual information is needed to interpret them correctly and to arrive at an understanding of the beneficial direction for reform in each country. This is particularly necessary because the PUMA indicators are based on information that is self-reported, not independently verified, and hence may be based on different understandings or interpretations of the questions.

8. Indicators may fail to fully reflect performance to the extent that the questionnaire has not identified all relevant factors. The extensive consultation undergone in developing the questionnaire should minimise this problem. However, it is important to identify any issues of importance for regulatory quality which have not been included.

9. Moreover, these indicators do not measure the actual quality of regulation in each country. They measure formal policies and processes in place, not the intensity with which they are applied nor the results they produce, nor alternative means of reaching the same ends. It is possible that a country that has formally adopted “good practice” policies has made no real progress “on the ground”, and that similar indicator scores are associated with very different performance. Nonetheless, these indicators based on international consensus about good practice can measure potential weaknesses in government capacities to assure high quality regulation. That is why these indicators are most useful when interpreted through self-assessment processes, or detailed country reviews of the kind currently being carried out by the OECD.

3. Questionnaire structure and basis for indicator development

10. The PUMA indicators questionnaire focused on framework conditions for good regulation; that is, the processes used in Member countries to make and review regulation. Each section considered an aspect of the legislative process or of regulatory review. The yes/no or multiple choice format was used to reduce the burden on responding countries as far as possible, though inevitably a good deal of nuance and context was lost. The questionnaire’s nine sections contain sixteen questions, divided into 160 sub-questions. A full summary of country responses to the questionnaire is included as Annexe B to this document.

11. The indicators presented in this report are synthetic indicators, that is, they represent the aggregation of responses to selected questions, rather than the straightforward presentation of single questions. Sometimes, questions were weighted to allow aggregation of different responses and to give more weight to questions that are more important. Hence, there is a degree of subjective judgement imbedded in the indicators. In general, however, the use of weighting has been kept to a minimum.

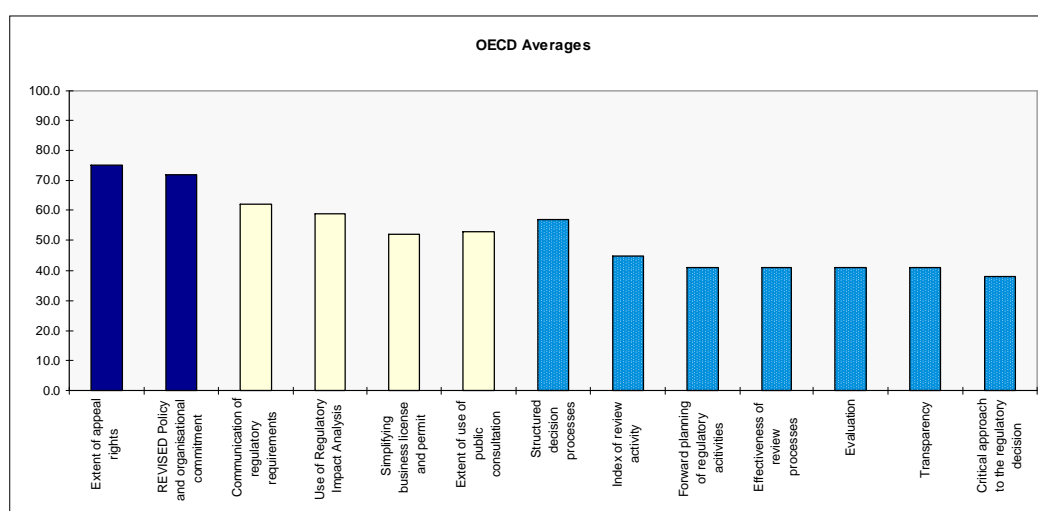
12. Annexe A presents a series of indicators, mostly in graphic form, accompanied by a brief discussion of the meaning of the indicator and by a list of the questions used in its construction, as well as the weighting applied. For each graph, an “OECD average” is marked as a horizontal line. This represents the mean score among the 26 responding countries. The X-axis is scaled from 0 to 100, representing the percentage of the maximum possible score. This allows an “at a glance” view of overall performance in relation to best practice for each indicator. Three types of indicators are presented in Annexe A:

- First, indicators that mirror the organisation of the questionnaire bring together the responses to the questions within each section. These indicators are based on discrete good practices within legislative or regulatory reform processes. Ten indicators of this type are presented, including, for example, “Policy and Organisational Commitment”, “Forward Planning of Regulatory Activities”, “Extent of Use of Public Consultation” and “Regulatory Impact Analysis”.
- Secondly, broader thematic indicators are based on key cross-cutting themes of relevance to regulatory reform. The three indicators in this category are “Evaluation”, “Transparency” and “Structured Decision Processes”. There is considerable potential for enlarging this set of thematic indicators.
- Thirdly, some questions are discussed in the text without the use of aggregated graphic results.

13. Two additional means of reporting data from the indicators questionnaire have been developed. Firstly, frequency charts have been constructed to indicate the extent to which particular mechanisms are employed among respondent countries. Secondly, pairs of indicators have been mapped together to indicate potentially significant correlations between different indicators. These are presented in Annexe C.

4. General discussion of indicator results

14. Interpretation is based, of course, on the caveats mentioned above. An immediately striking feature of the graphs is the wide variations in the OECD average score vis-à-vis the maximum achievable score. Variation ranges from below 40 per cent in the case of the “Critical approach to the regulatory decision” indicator to around 75 per cent for “policy and organisational commitment.



15. The highest average scores (above 70 per cent) relate to the policy and organisational commitment and extent of appeal rights. Lowest scores (under 50 per cent) relate to forward planning of regulatory activities, effectiveness of review processes, critical approach to the regulatory decision, index of review activity, evaluation and transparency. Middling scores (between 50 and 65 per cent) were for RIA, consultation, communication of regulatory requirements and simplifying business licences and permits.

16. These results seem consistent with the picture of regulatory reform programmes broadening and deepening over time which has emerged from much of the previous work of the regulatory management and reform group and of the Secretariat.¹ The indicators suggests that:

- Regulatory management and reform is widely understood and accepted at the policy level. This is reflected in the implementation of detailed policy commitments at the government-wide level and the establishment of necessary organisational support within the administration and at the political level.
- Considerable (though less widespread) progress has been made in operationalising these overall policy commitments by developing detailed policy in specific areas of key importance to reform (RIA, licence simplification), as well as some elements of quality assurance (consultation, communication of regulatory requirements).
- Somewhat less progress is evident in relation to broader quality assurance issues (forward planning of regulatory activities, critical approach to regulatory decision, transparency) as well as to cross-cutting reform issues (evaluation, effectiveness of review processes).
- Surprisingly, substantial progress remains to be made in the area of transparency of national regulatory systems, despite international recognition of its importance.

17. Overall, the indicators give a picture of regulatory reform in the OECD area as firmly embedded as a concept, but still a considerable distance from full development and integration with policy-making. There is suggestion that countries are still over-relying on political directives and policy statements from the top, without yet making the more difficult changes to the incentives and habits of the public administration that are needed for longer-term and sustainable improvement in regulatory quality. Hence, it is likely that the appearance of reform given by these indicators overstates the actual gains in terms of policy-effectiveness and reduced costs. The discussions of individual indicator results contained in Annexe A point to apparent priority areas for further attention.

4. Using the comparative indicators

18. The indicators should form a useful basis for countries wishing to benchmark performance in some or all of the areas covered. The graphs presented necessarily combine a range of related elements of the policy or reform process. Thus, where a problem area appears *prima facie* to exist, a key first task would be to focus on the specific elements that have lead to a low score. Annexe B to this document can assist.

19. Throughout the development of the indicators project, the need has been emphasized for professional judgement and a thorough knowledge of a country's cultural, institutional and political structure in interpretation of the results. Countries may consider that areas of low scores are not policy concerns because of such mitigating factors. Despite the extensive development process of the questionnaire, with the major involvement of country delegates, it is possible that the indicators have not

¹ See Jacobs, Scott H., Deighton-Smith, Rex, Huigen, Hans, and Buchwitz, Rebecca (1997) "Regulatory Quality and Public Sector Reform," Chapter 2 in *The OECD Report on Regulatory Reform: Thematic Studies* (OECD: Paris).

captured important explanatory elements of importance. Any such areas are clearly priorities for further development of the database, and should be signalled to the Secretariat.

5. Possible next steps

20. The broad range of indicators presented below represent only the first stage of the analysis of this rich data source. Further analysis relies in part on the input of Regulatory Management and Reform Group experts in identifying possible additional indicators and suggesting refinements to those that have already been constructed. Comments on the usefulness of the different indicators presented are also sought.

21. Annexe C to this document indicates one possible further area of development. These graphs represent the results of a mapping of particular pairs of indicators to attempt to identify important positive or negative correlations. Clear correlations appear to exist between the following pairs of indicators:

- RIA and consultation,
- consultation and transparency (n.b. these are related indicators),
- policy & organisational commitment and index of review activity,
- transparency and predictability, and
- policy & organisational commitment and effectiveness of review mechanisms.

22. Weaker correlations appear to exist for the following indicators:

- RIA and critical approach to the regulatory decision
- RIA and index of review activity.

23. Comments are sought on the interpretation of these observed correlations, whether this is considered a useful area of further investigation and what other indicator combinations might usefully be investigated in this way.

ANNEXE A: INDICATORS OF GOVERNMENT ABILITY TO ENSURE HIGH QUALITY REGULATION.

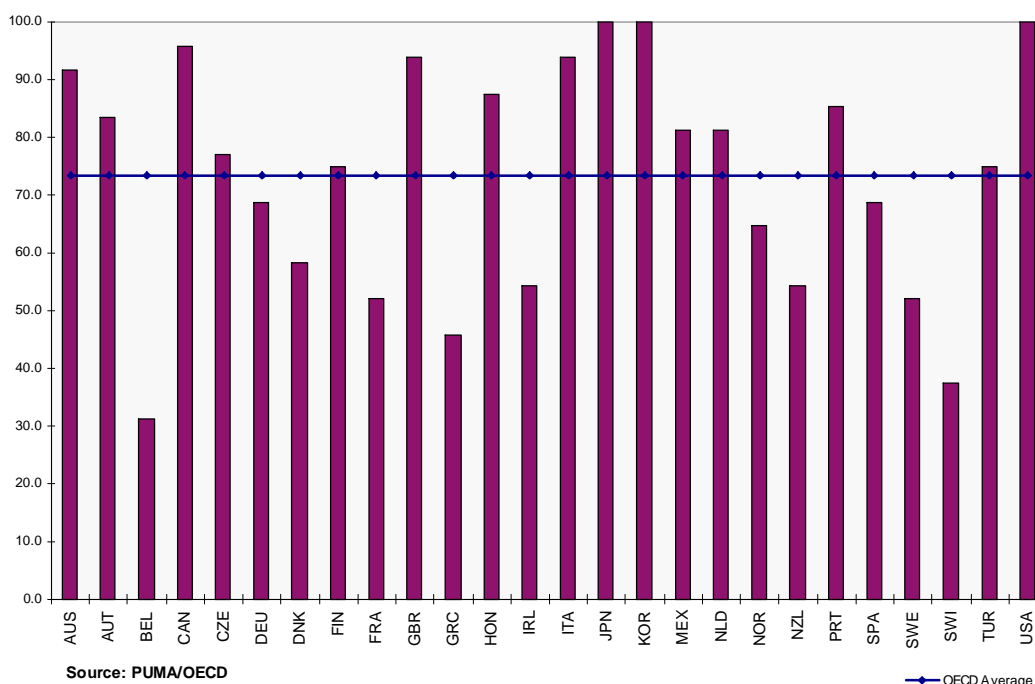
This document briefly discusses the purpose and the results of each indicator. In each case, the results are summarised in a bar graph presenting the OECD average score and the results for each respondent country. In order to facilitate comparison, graphs have been scaled from 0 to 100, where 100 represents the maximum possible score for each indicator.

Preceding the graph, the questions which were used in the compilation of the indicator are reproduced in full for ready reference, numbered as per the original questionnaire. Also included is the weighting system used in determining the indicator scores. A total of sixteen indicators is presented.

Indicator 1: Policy and Organisational Commitment

This indicator first seeks to measure the extent to which regulatory reform is guided by explicit government wide policies embracing key elements of the regulatory reform agenda. Secondly, it measures the extent to which specific responsibilities for reform are allocated, embracing both Ministerial and administrative responsibilities. In the latter category is a consideration of the powers of administrative bodies specifically responsible for regulatory reform. In sum, this can be considered an indicator of the degree of systematicness with which reform is pursued.

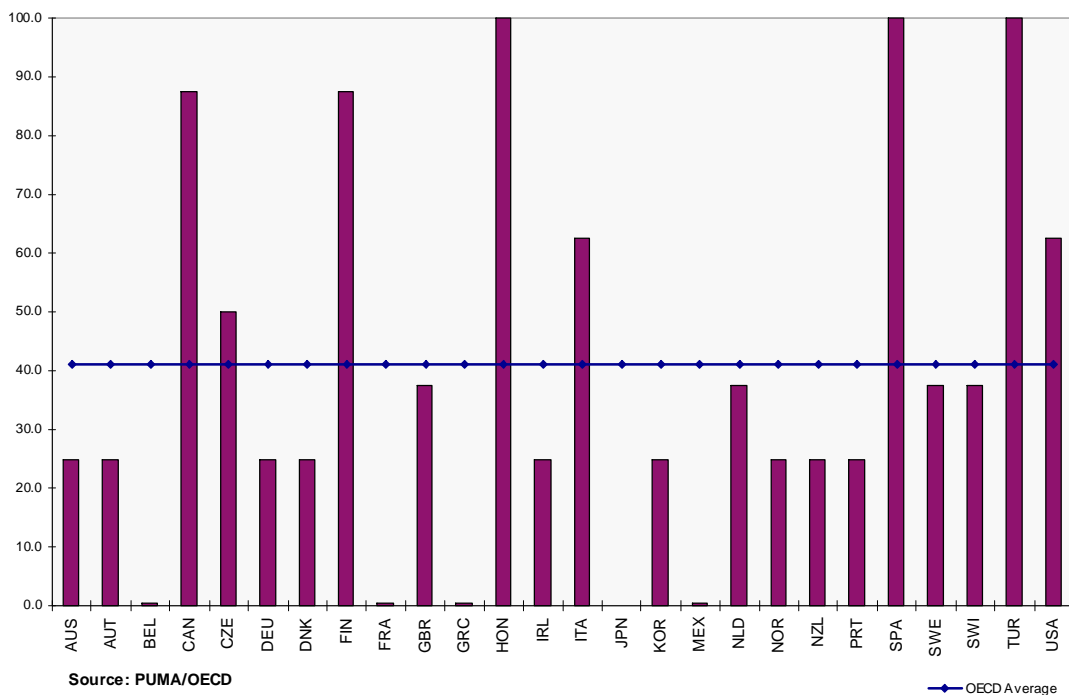
The OECD average score, at approximately 72 per cent, is among the highest for any indicator. Variability is relatively low, with all but three respondents scoring above 50 per cent. Six respondents scored more than 90 per cent. Clearly, Member countries have made major steps in adopting broad reform policies and in making organisational arrangements to implement them. Notable areas of relatively poor performance relate to requirements for evaluation of regulatory programmes (required on a Government wide basis in only 9 cases) and requirements to report on reform progress by individual ministers (extant in only 13 cases). Moreover, in only 14 cases is a specific Minister accountable for reform.



Indicator 2: Forward planning of regulatory activities

This indicator looks at the compilation and dissemination of lists of proposed principal and delegated legislation. This issue is important in two ways; firstly, as a measure of co-ordination and priority setting in the legislative programme and, secondly, as a measure of transparency. If regulated groups are aware of proposals ahead of time they are better placed to provide input as to the contents and objectives. This is particularly important with delegated legislation, where effective involvement is often a problem. For this reason, the answer to question 3b(iii) has been weighted heavily.

The average score on this indicator is among the lowest of the group, at slightly more than 40 per cent. There is wide variability around this mean, with three countries scoring 100 per cent, while four countries score zero and nine others score 25 per cent. This is clearly an area to be focused on for many countries in planning further reform efforts.



Questions incorporated in indicator

[n.b. Japan did not answer this question].

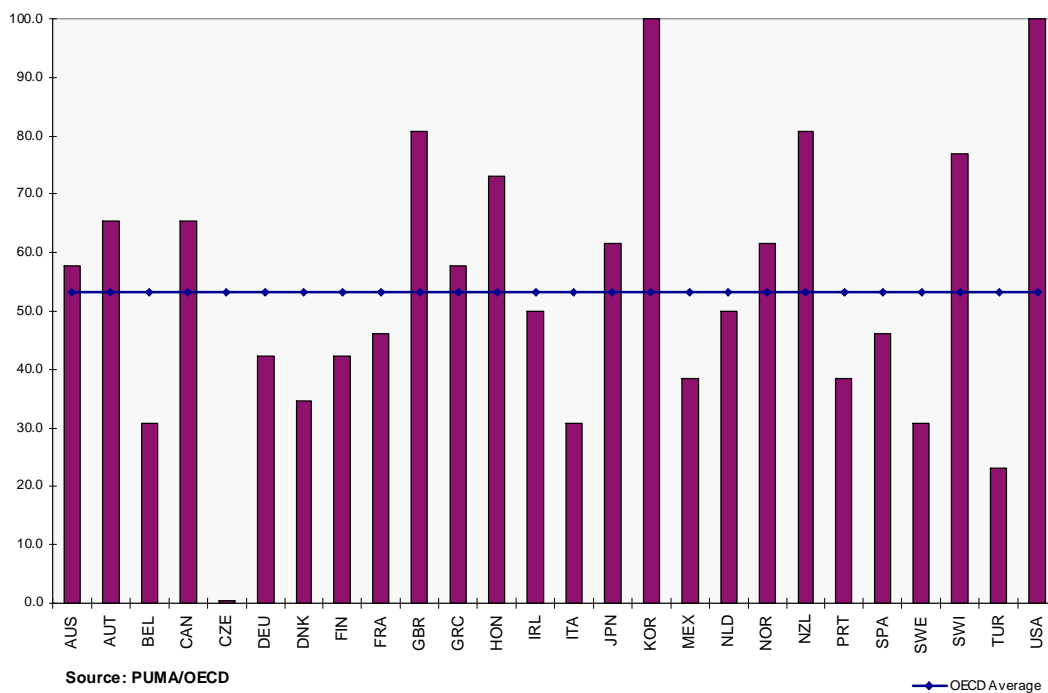
3. *Forward planning of regulatory activities*

	Yes	No
a) <i>Does the government periodically compile a list of laws planned for the future?</i>	1/2	0
If the answer is "Yes":		
a(ii) <i>Does the list include most or all major laws planned for the next year?</i>	1/2	0
a(iii) <i>Is the list easily available to the public?</i>	1	0
b) <i>Does the government periodically compile a list of subordinate regulations planned for the future?</i>	1/2	0
If the answer is "Yes":		
b(ii) <i>Does the list include most or all major subordinate regulations planned for the next year?</i>	1/2	0
b(iii) <i>Is the list easily available to the public?</i>	3	0

Indicator 3: Extent of use of public consultation

This indicator rates highly consultation systems that are systematic, rather than discretionary, as they provide a safeguard against the misuse of discretion to control or eliminate public input on sensitive issues. Also favoured is consultation that is open, rather than selective. Openness guards against undue influence being given to powerful interest groups and tends to empower citizens. Finally, the indicator favours consultation processes that commence as early as possible in the regulatory process, as earlier consultation maximises the probability of real influence on regulatory outcomes and thus on regulatory quality.

The OECD average is about 53 per cent, or in the middle range for the current group of indicators. Variability around this mean is relatively low, with all but two respondents scoring at least 30 per cent and only two respondents scoring above 80 per cent. Results on this indicator may appear counterintuitive, as there are countries that use consultation extensively but score relatively low because their systems are not completely open to the public and/or do not commence at an early stage of regulatory development.



Questions incorporated in indicator

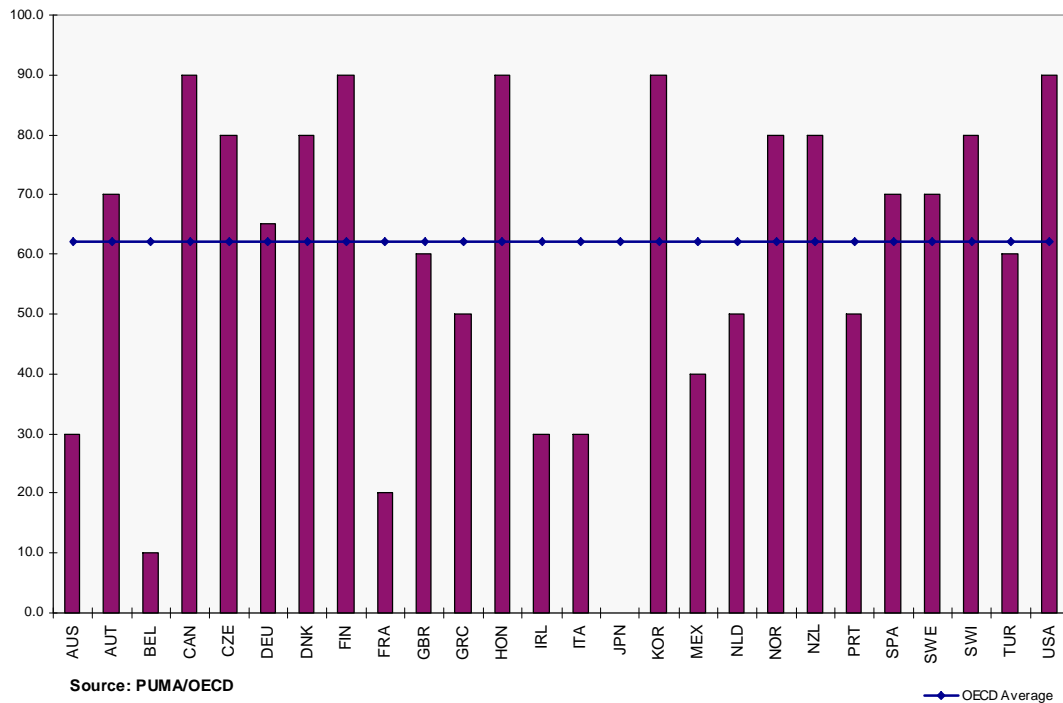
5. Public consultation

	<i>Always</i>	<i>In some cases</i>		
a) <i>Is public consultation a routine part of making new regulations?</i>	2	1		
<hr/> → <i>If the answer is “always” or “in some cases”:</i>			<i>Yes</i>	<i>No</i>
a(ii) <i>Is consultation required by law?</i>			1	0
a(iii) <i>Is consultation required by formal government decree or instruction?</i>			1	0
a(v) <i>At what stages in the regulatory process is consultation required to be undertaken?</i>				
- <i>Prior to broad proposals being made?</i>			2	0
- <i>Prior to detailed proposals being made?</i>			1	0
- <i>After detailed proposals are made?</i>			0	0
	<i>Always</i>	<i>Usually</i>	<i>Some-times</i>	<i>Rarely</i>
a(vi) <i>Is the existence of opportunities to be consulted on proposed regulation widely publicised?</i>	2	1	1/2	0
a(vii) <i>Can any member of the public choose to participate in the consultation?</i>	2	1	1/2	0
a(viii) <i>Are the views of participants in the consultation process made public?</i>	2	1	1/2	0

Indicator 4: Communication of regulatory requirements

This indicator rates the accessibility and comprehensibility of regulation. Its dual focus is on the organisation of regulatory requirements (both in the legal sense of codification and in the publications sense of the existence and dissemination of comprehensive registers) and on the use of plain language drafting. Both these issues are likely to be crucial in determining the level of compliance with regulatory standards, due to their impact on awareness of regulatory requirements and understanding of them. Compliance rates are, of course, a fundamental determinant of regulatory quality.

The OECD average score on this indicator is relatively high, at about 62 per cent. Variability is low, with no respondent scoring above 90 per cent and 16 countries scoring between 60 and 90 per cent. Notably, only ten respondents make registers of subordinate legislation publicly available by electronic means. A greater focus on the possibilities offered by new technology in this area is needed.



Questions incorporated in indicator

[N.b. Japan did not answer this question]

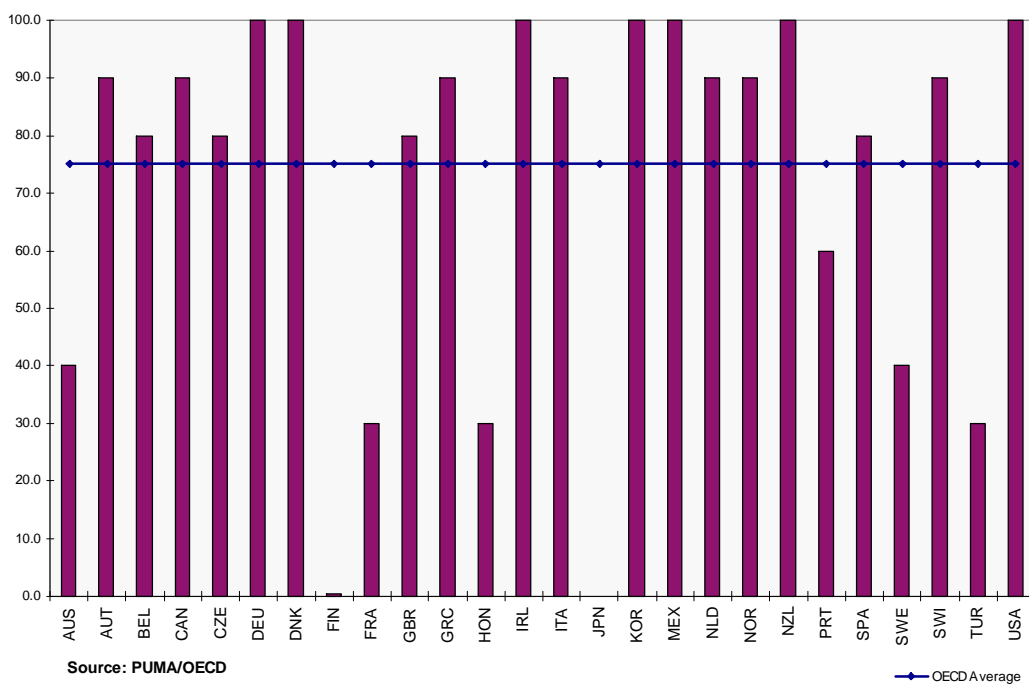
6. Communication and enforcement of regulations

a) Are there systematic procedures for making regulations known and accessible to affected parties?		Yes	No
		2	0
→ If the answer is “yes”, which of the following measures are employed:			
a(i) Codification of laws. If yes:		Yes	No
• Is there a mechanism for regular updating of the codes?		1	0
a(ii) Publication of a consolidated register of all subordinate regulations currently in force. If yes:		1	0
• Is there a provision that only regulations in the registry are enforceable?		1	0
• Can the register be searched by computer by the public?		1	0
	More than annually	Annually	Less than annually
• How frequently is the register updated?	1	1/2	0
a(iii) Computerised dissemination of regulation.		Yes	No
		1	0
a(iv) A general policy requiring “plain language” drafting of regulation. If yes:		1	0
• Is guidance on plain language drafting issued?.		1	0

Indicator 5: Extent of appeal rights

This is an indicator of the ability of regulated parties to ensure that individual decisions of regulators are fair and appropriate. Thus, it measures the availability and nature of appeal rights in cases of individual enforcement decisions. It favours widespread rights of appeal to independent arbiters, either judicial or administrative in nature.

The OECD average on extent of appeal rights is the highest of any of the current group of indicators, at 75 per cent. Eighteen countries scored 80 per cent or higher. These results suggest that regulated groups in Member countries can have a high degree of confidence in the application of this form of administrative discretion.



Questions incorporated in indicator

[N.b. Japan did not answer this question]

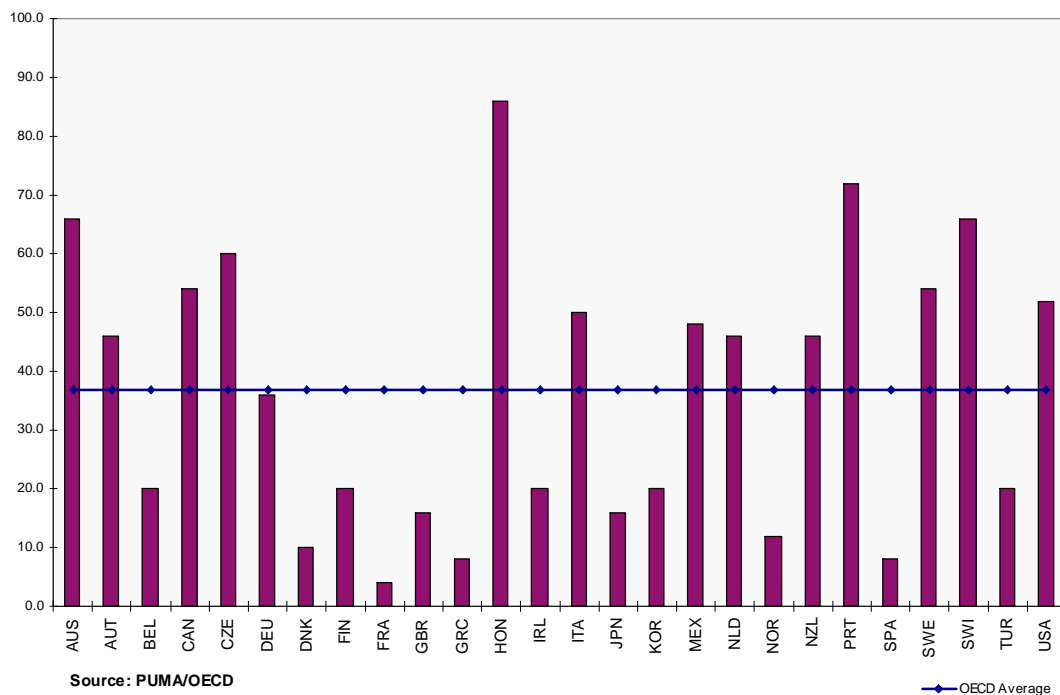
6. Communication and enforcement of regulations

	<i>In all cases</i>	<i>In some cases</i>	<i>No</i>
b) Do affected parties have the right to appeal against adverse enforcement decisions in individual cases? If yes:	3	1	0
b(i) What forms can this appeal take? (tick all that apply)			
	<i>Possible in most cases</i>	<i>Possible in some cases</i>	<i>Not possible</i>
• Judicial review?	1	1/2	0
• Administrative review to an independent body?	1	1/2	0
• Administrative review by the regulatory enforcement body?	0	0	0

Indicator 6: Critical approach to the regulatory decision

This indicator summarises the degree to which new regulation is the product of a series of conscious policy choices made in a comparative context. It favours the use of explicit decision criteria in making an conscious decision to regulate in the first instance, use of a guided process of assessing policy alternatives, and use of RIA and risk analysis to guide the choice between these alternatives.

The OECD average score on this indicator is extremely low, at less than 40 per cent. Variability is high, with scores ranging between approximately 5 and 85 per cent. Notably, 17 respondents state that an explicit justification of the need for regulation is required to be given. 20 respondents state that alternatives to the proposed regulation are required to be assessed, easily the highest positive response in this group of questions, but in only half of these cases is explicit guidance issued on this point. Particularly in view of the developing understanding of regulatory alternatives and their potential, this is a key area for further work for many countries.



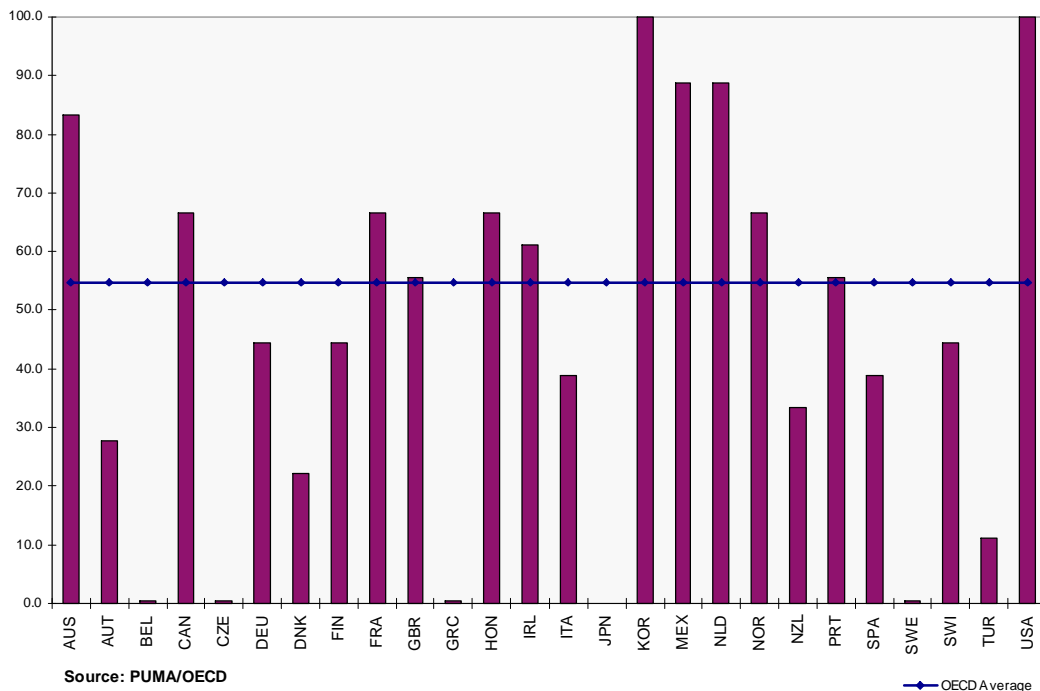
Questions incorporated in indicator

	Yes	In some cases	No
7a) Are regulators required to provide explicit justification of the need for new regulation? If the answer is "yes" or "in some cases"	2	1	0
→ 7a(ii) Are explicit decision criteria required to be used in making this justification?	2	1	0
8a) Are regulators required to assess alternative policy instruments (regulatory and non-regulatory) before adopting new regulation?		Yes	No
		2	0
8b) Has guidance been issued on using alternatives to traditional regulation?		2	0
	In all cases	In some cases	No
9a) Is RIA required before new regulation is adopted?	2	1	0
9b) Is risk assessment a normal part of the development of health, safety and environment regulation?	1	1/2	0

Indicator 7: Regulatory Impact Analysis

This indicator is fundamental to judgements about countries’ ability to ensure systematically the quality of new regulatory proposals. This is a complex indicator that looks at many facets of the design of a RIA system. It favours RIA systems that are widely applicable, that are based on the benefit/cost principle, that include an independent verification of analytical standards and that include public consultation conducted on the basis of RIA documents.

The OECD average score on this indicator is in the middle of the indicators group at 55 per cent. There is extremely wide variability on this indicator, with four respondents scoring zero while two score 100 per cent. Countries have found that the effective implementation of RIA is a long term project. However, it is fundamentally dependent on having a sound formal framework. This indicator suggests that there is considerable scope for improvement in this area.



Questions incorporated in indicator

[N.b. Japan did not answer this question].

9. **Regulatory impact analysis (RIA)**

		<i>In all cases</i>	<i>In some cases</i>	<i>No</i>	
a) <i>Is RIA required before new regulation is adopted?</i>					
→	<i>If the answer is “in all cases” or “in some cases”:</i>	<i>In all cases</i>	<i>Only for major regulation</i>	<i>Some policy areas only</i>	<i>No</i>
	<i>a(i) Is RIA required by law?</i>	1	1	1/2	0
	<i>a(ii) Is RIA required for draft laws?</i>	1	1	1/2	0
	<i>a(iii) Is RIA required for draft subordinate regulations?</i>	1	1	1/2	0
	<i>a(iv) Are regulators required to quantify costs of new regulations?</i>	1	1	1/2	0
	<i>a(v) Are regulators required to quantify benefits of new regulations?</i>	1	1	1/2	0
	<i>a(vi) Are regulators required to demonstrate that the benefits of new regulation justify the costs?</i>	1	1	1/2	0
	<i>a(vii) Is the likely distribution of effects across society required to be made transparent?</i>	1	1	1/2	0
	<i>a(xii) Does a government body outside the ministry sponsoring the regulation review the quality of the RIA?</i>	2	2	1	0
	<i>a(xiv) Are RIA documents required to be publicly released?</i>	1	1	1/2	0

Indicator 8: Lawdrafting capabilities

The technical quality of the legal texts which embody regulatory requirements is an important aspect of quality. The quality of drafting impacts on the clarity, simplicity and enforceability of legislation and on the scope for duplication, overlap and inconsistency. Question 10 of the questionnaire is composed of three sub-questions relating to lawdrafting capabilities.

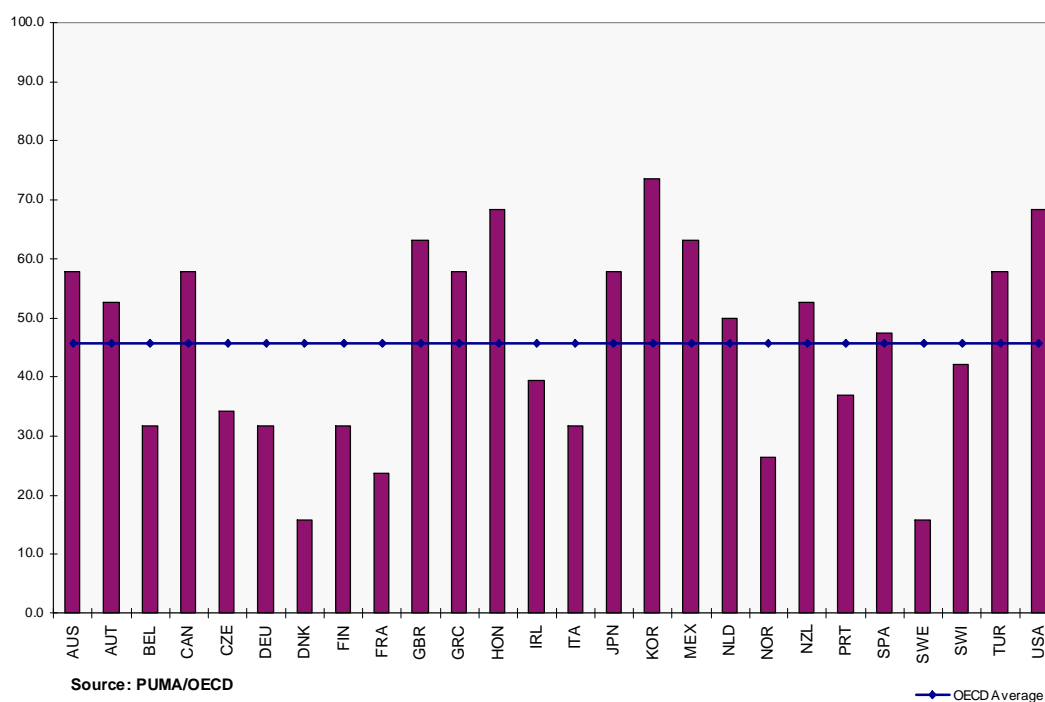
Fourteen respondents stated that regulators employ specialist lawdrafters in all cases, while ten responded that specialists were employed in some cases and one responded that they were not used at all. Nineteen respondents reported that lawdrafting was checked by a body within Government but independent of the regulator “in all cases” and six “in some cases”. Twelve respondents stated that lawdrafting is checked by parliamentary officers, while eight stated that it was not. (nb. The different totals reflect unanswered sub-questions).

Overall, these responses seem to indicate a high level of quality assurance in lawdrafting, with virtually all respondents using both lawdrafting specialists and independent lawdrafting quality checks in at least some cases. Notwithstanding this, activity to further improve lawdrafting quality is underway in a number of Member countries at present.

Indicator 9: Index of review activity

This indicator combines responses to a wide range of questions relating to review activity. A major part of it consists of a measure the proportion of regulations in three key policy areas that have been reviewed in the past five years. In addition, the indicator favours the use of automatic review and repeal mechanisms as well as specific burden reduction programmes in the areas of administrative burdens and business licences and permits.

Scores on this indicator are quite low, with an average of 46 per cent. No respondent scored more than 75 per cent. However, this aggregation masks the fact that most respondents stated that they had evaluated “around half” or “a majority” of regulations in each of the three policy areas canvassed. In the health, safety and consumer protection area, this rose to 18 respondents. Moreover 15 respondents “frequently” use sunseting for both laws and regulations and 15 respondents frequently use automatic review requirements.



Questions incorporated in indicator

11a) What proportion of the body of existing regulations in the following areas been subjected to a review of regulatory quality in the past 5 years?

	A majority	Around half	A minority	Minimal or none
• Environmental regulations	2	1	1/2	0
• Health, safety and consumer protection regulations	2	1	1/2	0
• Employment regulations	2	1	1/2	0

	Yes	No
11b) Is periodic evaluation of existing regulations required for all policy areas?	2	0

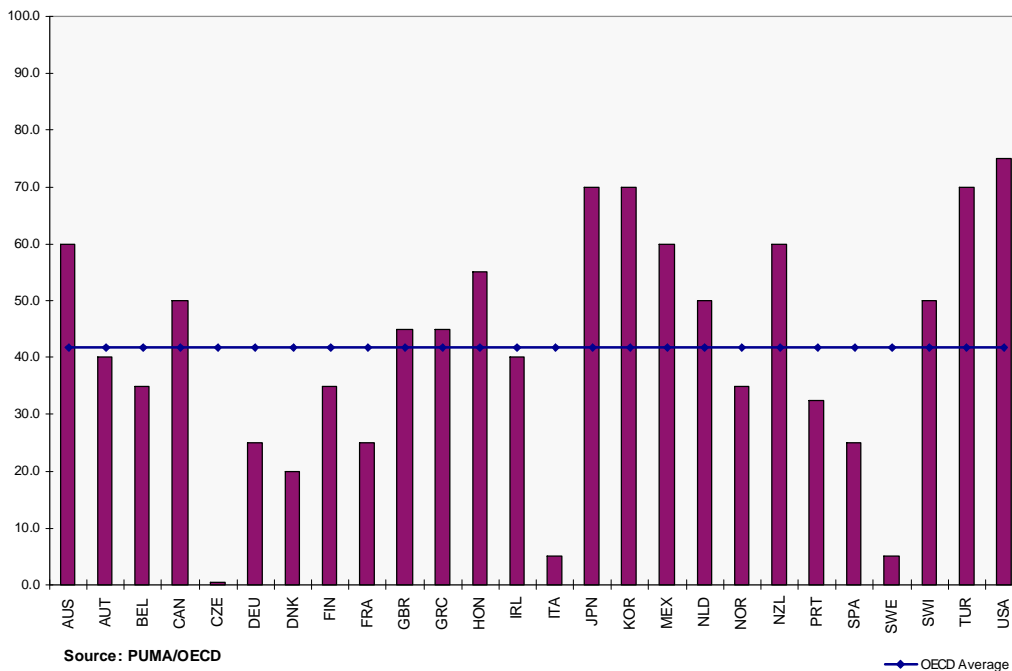
	Routinely	Frequently	Sometimes	Never
11c) Is “ sunsetting ” used for laws?	2	1	1/2	0
11d) Is “ sunsetting ” used for subordinate regulations?	2	1	1/2	0
11h) How frequently do major substantive changes to existing regulation result from reviews?	4	2	1	0

	Yes	No
11(l) Is there a mechanism by which the public can make recommendations to modify specific regulations? (e.g. Electronic mailboxes, ombudsman or “request and review” legislation).	1	0
12(a) Is there an explicit programme to reduce the administrative burdens imposed by government on enterprises and/or citizens?	1	0
13(f) Is there a programme underway to review and reduce the number of licenses and permits required by the national government?	1	0

Indicator 10: Effectiveness of review processes

This indicator looks at the quality of the processes used in reviewing and reforming existing regulatory structures. It favours reviews that are open to the public, subject to independent quality checks, based on known decision criteria and use RIA disciplines. All of these elements contribute to the likelihood that welfare enhancing policy change will follow from reviews. A question asking how frequently reviews lead to substantive regulatory change provides a direct measure.

Scores on this indicator are low, with the OECD average being slightly more than 40 per cent. No respondent scored higher than 75 per cent and only four respondents scored over 60 per cent. A particularly notable area of widespread weakness is in the quantification of the benefits of reform. Only 2 respondents routinely or frequently quantify the benefits of reform, although eight routinely or frequently use RIA in the conduct of reviews.



Questions incorporated in indicator

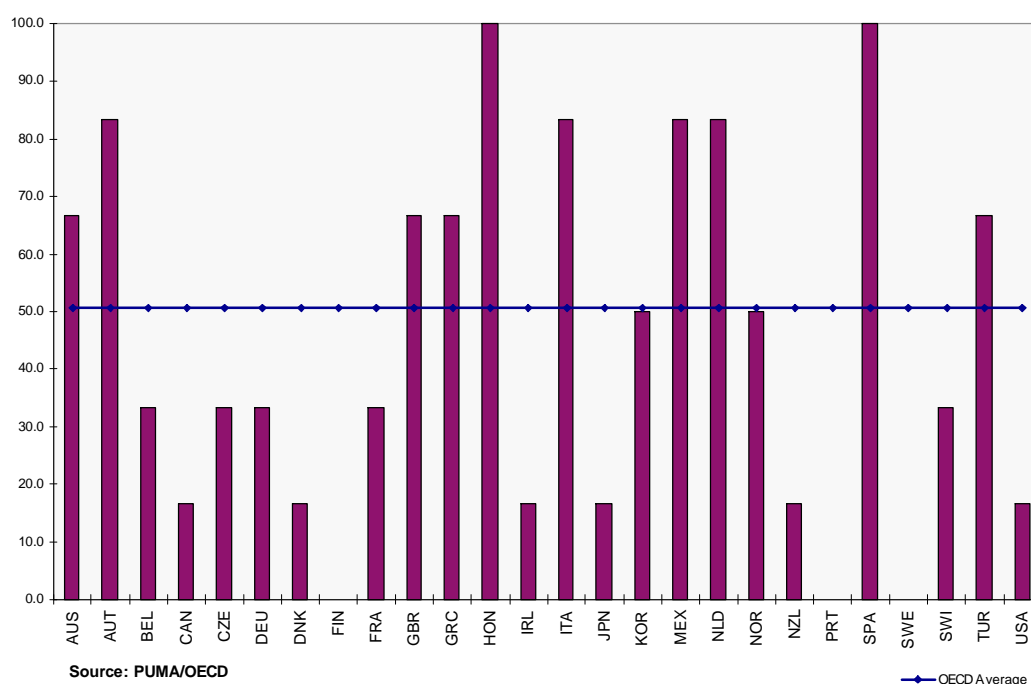
11. Regulatory review and evaluation

		Yes	No	
f) <i>Are there standardised evaluation techniques or decision criteria to be used when regulation is reviewed?</i>		3	0	
	Routinely	Frequently	Sometimes	
	Never			
g) <i>Is Regulatory Impact Analysis used in the conduct of regulatory reviews?</i>	3	2	1	0
h) <i>How frequently do major substantive changes to existing regulation result from reviews?</i>	2	2	1	0
i) <i>Are cost savings or enhanced benefits due to these changes quantified?</i>	3	2	1	0
j) <i>Is there an independent check on the quality of reviews?</i>	3	2	1	0
k) <i>Are the review processes public?</i>	3	2	1	0
		Yes	No	
l) <i>Is there a mechanism by which the public can make recommendations to modify specific regulations? (e.g. Electronic mailboxes, ombudsman or "request and review" legislation).</i>		2	0	

Indicator 11: Simplifying business licence and permits

This indicator looks at the existence and content of policies aimed specifically at reducing the administrative burdens of business licence and permit requirements. This recognises that these requirements are a major issue in many Member countries and an impediment to entrepreneurialism and new business start-ups. The indicator favours specific review and reduction policies, especially those co-ordinated with sub-national governments, which are frequently the major licence issuing authorities. It also favours “one stop shops” and “silence is consent” policies as means of reducing the time and search costs involved in licensing for business. Finally, a question on whether there is an accurate “count” of existing licences is included as a proxy for effective management of the burden.

The OECD average for this indicator is 50 per cent, or in the low to mid range among the current group of indicators. Variability is very high, with two respondents receiving a 100 per cent score and six respondents receiving a score of less than 20 per cent. However, there was an even overall spread of scores on individual questions, precluding the identification of any areas of particularly poor performance.



Questions incorporated in indicator

[N.b. Finland, Portugal and Sweden did not answer this questions]

13. *Business licenses and permits*

In this questionnaire, a **notification** is defined as a requirement for setting up a business calling for (i) providing information to a specific government authority and (ii) complying with minimum standards as conditions for conducting activities. A **license** or **permit** is defined as a notification which (ii) also requires prior approval or response by the government authority as a condition for conducting activities.

	Yes	No
a) Is the "silence is consent" rule (i.e. that licenses are issued automatically if the competent licensing office has not acted by the end of the statutory response period) used at all?	1	0
b) Are there single contact points for getting information on licenses and notifications?	1	0
c) Is there a complete count of the number of permits and licenses required by the national government (all ministries and agencies)?	1	0
d) Is there a programme underway to review and reduce the number of licenses and permits required by the national government?	1	0
e) Is there a programme underway to co-ordinate the review and reform of permits and licenses at subnational levels of government?	2	0

Indicator 12: Co-ordination as a tool of reform

Regulation is an activity undertaken by an increasing number of players, at both national, sub-national and supra-national level. This means that effective co-ordination is increasingly important to ensure that regulatory quality is not compromised by inconsistency, duplication or gaps in regulatory coverage. In addition, reform activity can be more effective if co-ordinated between governments.

Question 14 of the questionnaire seeks information on co-ordination mechanisms and on the use of international standards. Eight respondents stated that specific procedures for co-ordination between levels of government exist in all cases where new regulation is being developed, while eleven responded that these exist in some cases. Co-ordination on regulatory reform is slightly less developed, with four respondents stating that co-ordination occurs in all cases and twelve that it occurs in some cases.

The use of international standards as a means of ensuring better regulatory co-ordination also seems to be well developed. Eight respondents state that they have a policy favouring the use of international standards in preference to national standards in all cases, while thirteen more state that such policies exist in some cases.

These results suggest that co-ordination in regulation-making is relatively highly developed.

Indicator 13: Training the public service

Regulators can only produce high quality regulation and implement effective reform strategies if they have the necessary skills. Question 15 seeks information on the provision of specific training within the public sector.

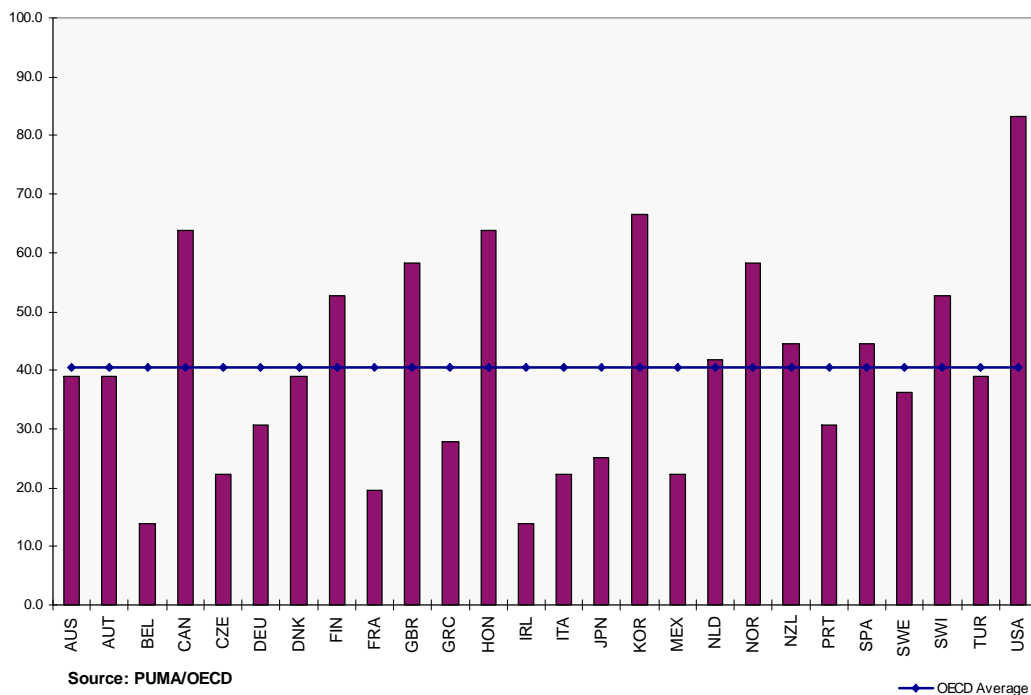
Twenty two respondents stated that formal training programmes exist to equip civil servants with the skills to produce high quality regulation. Fifteen of these programmes, or about two thirds, include training in the conduct of regulatory impact analysis. A slightly smaller number - thirteen - include training in the use of alternative policy instruments.

On first view, these response seem to indicate a high level of commitment to training. However, it is notable that of the twenty two respondents who state that RIA is required in developing new regulation in some or all cases only two thirds provide training in the necessary skills. Similarly, only two thirds of the twenty respondents who state that regulators are required to assess alternative policy instruments before adopting regulation provide training in their use, while even fewer - ten respondents - have issued written guidance on the subject. These appear to be areas for future action.

Indicator 14: Transparency

This is the broadest indicator among the current set, being derived from the answers to nineteen sub-questions. The indicator includes measures of transparency relating to forward regulatory planning, consultation and RIA on current proposals and communication of existing regulatory requirements (including licensing). It also measures transparency in relation to reform processes.

Scores on this indicator are low, with an average of 40 per cent. Variability is also relatively low, as only one respondent scores more than 70 per cent and only seven respondents score less than 30 per cent. While transparency is a widely shared value of good governance, this indicator suggests that there is considerable room for improvement in translating the value into good practice.



Questions incorporated in indicator

3. Forward planning of regulatory activities

	Yes	No
a(iii) Is the list of laws planned for the future easily available to the public?	1	0
b(iii) Is the list of subordinate regulations planned for the future easily available to the public?	1	0

4. Administrative procedures

b(ii) Do these requirements(admin. procedures) include scrutiny by a specifically tasked body within the national legislature?	1	0
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5. Public consultation

	Always	Usually	Some-times	Rarely
a(vii) Can any member of the public choose to participate in the consultation?	2	1	1/2	0

6. Communication and enforcement of regulations

	Yes	No	
a) Are there systematic procedures for making regulations known and accessible to affected parties?			
→ If the answer is “yes”, which of the following measures are employed:	Yes	No	
a(i) Codification of laws. If yes:	1	0	
• Is there a mechanism for regular updating of the codes?	<input type="checkbox"/>	<input type="checkbox"/>	
a(ii) Publication of a consolidated register of all subordinate regulations currently in force. If yes:	<input type="checkbox"/>	<input type="checkbox"/>	
• Is there a provision that only regulations in the registry are enforceable?	<input type="checkbox"/>	<input type="checkbox"/>	
• Can the register be searched by computer by the public?	<input type="checkbox"/>	<input type="checkbox"/>	
• How frequently is the register updated?	More than annually 1	Annually 1	Less than annually 0
a(iii) Computerised dissemination of regulation.	Yes 1	No 0	
a(iv) A general policy requiring “plain language” drafting of regulation.	1	0	

9. Regulatory impact analysis (RIA)

	In all cases	Only for major regulation	Some policy areas only	No
a(xiv) Are RIA documents required to be publicly released for consultation?	2	1	1/2	0
a(xvii) Are reports on compliance with RIA requirements published regularly?			Yes 1	No 0

11. Regulatory review and evaluation

	Routinely	Frequently	Sometimes	Never
k) Are the review processes (for existing legislation) public?	2	1	1/2	0

13. Business licenses and permits

	Yes	No
b). Are there single contact points for getting information on licenses and notifications?	1	0

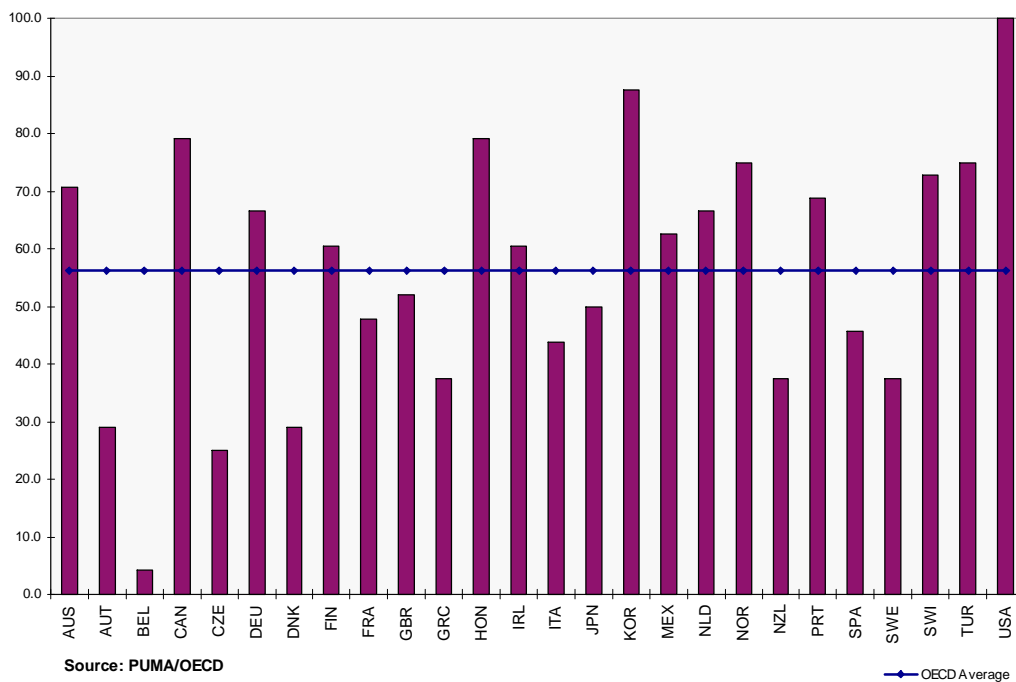
16. Indicators of the results of reform

a(iv) Have reforms increased government transparency?	1	0
b) Does the government publish an annual progress report on regulatory reform	1	0

Indicator 15: Structured decision processes

Confidence that regulatory decisions are rationally and impartially made is a key element of system quality. Transparency is clearly a major contributor to this outcome. However, a separate dimension relates to the existence of explicit regulatory policies and known criteria for specific aspects of decision-making. This indicator includes a range of questions asking if specific policies and criteria are applied at various stages of decision-making.

Scores on this indicator are in the middle range, with the OECD average being 57 per cent. There is considerable variation on this measure, with eight respondents scoring more than 70 per cent, while four respondents score less than 30 per cent.



Questions incorporated in indicator

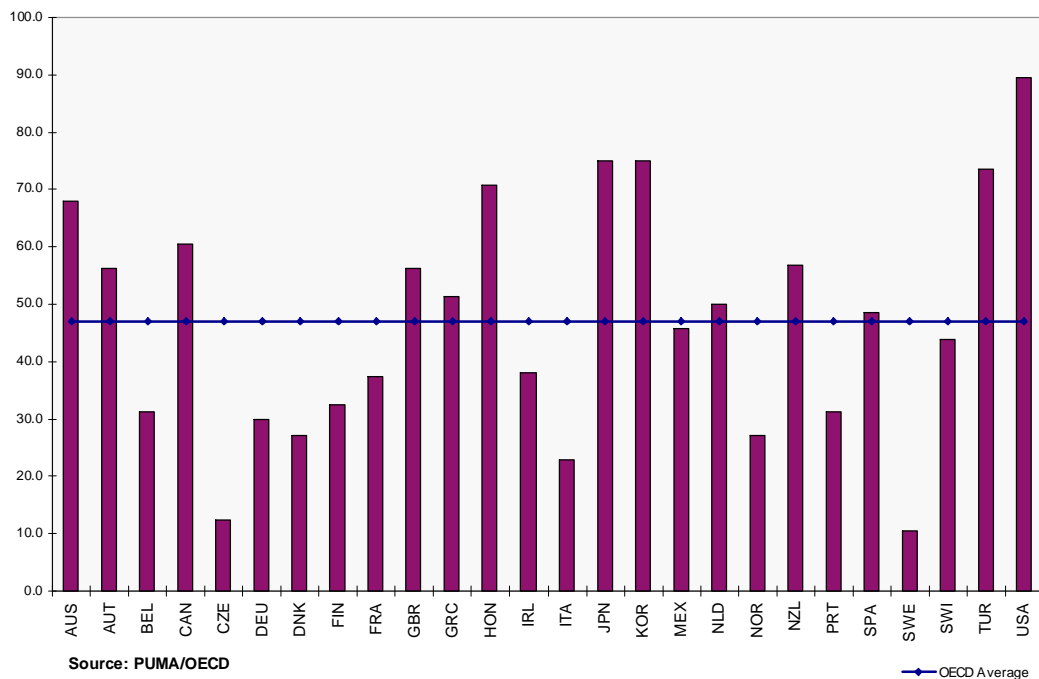
1b) Are there explicit published policies promoting regulatory reform or regulatory quality improvement in specific sectors?

→ If yes:		Yes	No
<i>b(iv)</i>	<i>Does it set out explicit principles of good regulation?</i>	1	0
		Yes	No
<i>4a)</i>	<i>Are there standard procedures, established in law, by which the administration develops draft legislation?</i>	1	0
<i>4b)</i>	<i>Are standard procedures established in law for making subordinate regulation?</i>	1	0
<i>7a(ii)</i>	<i>Are explicit decision criteria required to be used in making this justification [of the need for regulation]</i>	1	1/2 0
<i>8b)</i>	<i>Has guidance been issued on using alternatives to traditional regulation?</i>		1 0
<i>9a(vi)</i>	<i>Are regulators required to demonstrate that the benefits of new regulation justify the costs?</i>	1 1	1/2 0
		Yes	No
<i>11f)</i>	<i>Are there standardised evaluation techniques or decision criteria to be used when regulation is reviewed?</i>	1	0
		Routinely	Frequently
<i>11g)</i>	<i>Is Regulatory Impact Analysis used in the conduct of regulatory reviews?</i>	1	2/3 1/3 0
		Sometimes	Never

Indicator 16: Evaluation.

This is an extremely broad indicator, containing the answers to sixteen sub-questions. The indicator includes evaluation of both regulatory programmes and regulatory reform efforts. Questions cover both broad areas of law and specific issues of major importance, including the performance of particular tools of reform, such as RIA.

Scores on this indicator are low, with an OECD average of 42 per cent and a highest score of 77 per cent. Fifteen respondents scored below the mean and only ten above it. A key area in which scoring was low relates to the use of RIA in reviewing existing regulation and in the quantification of the costs and benefits of proposed reforms, where only eight (RIA) and two (quantification) respondents stated that these techniques were used either “routinely” or “frequently”.



Questions incorporated in indicator

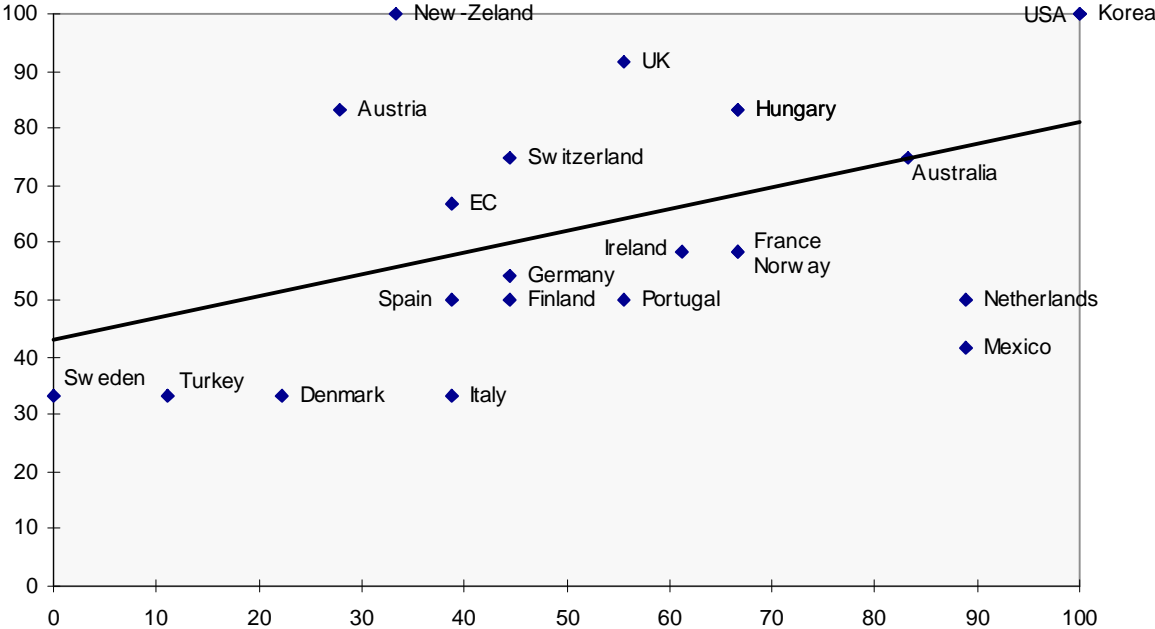
1 c) Does government policy impose specific requirements in relation to the following aspects of regulatory quality assurance?

	For some sectors		Government wide	
	Yes	No	Yes	No
1c(vii) Evaluation of the results of regulatory programmes	1/2	0	1	0
2a(iv) Does this body monitor and report on progress made on reform by individual Ministers?			Yes	No
9a(xvii) Are reports on compliance with RIA requirements published regularly?			1	0
11 a) What proportion of the body of existing regulations in the following areas been subjected to a review of regulatory quality in the past 5 years?				
	A majority	Around half	A minority	Minimal or none
• Environmental regulations	1	2/3	1/3	0
• Health, safety and consumer protection regulations	1	2/3	1/3	0
• Employment regulations	1	2/3	1/3	0
			Yes	No
11b) Is periodic evaluation of existing regulations required for all policy areas?			2	0
	Routinely	Frequently	Sometimes	Never
11e) Do specific laws include automatic review requirements?	2	2	1	0
			Yes	No
11f) Are there standardised evaluation techniques or decision criteria to be used when regulation is reviewed?			1	0
	Routinely	Frequently	Sometimes	Never
11g) Is Regulatory Impact Analysis used in the conduct of regulatory reviews?	3	2	1	0
11h) How frequently do major substantive changes to existing regulation result from reviews?	2	1	1/2	0
11k) Are the review processes public?	3	2	1	0
			Yes	No
11l) Is there a mechanism by which the public can make recommendations to modify specific regulations? (e.g. Electronic mailboxes, ombudsman or "request and review" legislation).			1	0
12a) Is there an explicit programme to reduce the administrative burdens imposed by government on enterprises and/or citizens?			1	0
13 f) Is there a programme underway to review and reduce the number of licenses and permits required by the national government?			1	0
			Yes	No
16a) Has a formal evaluation of progress toward the objectives of regulatory reform been made?			2	0

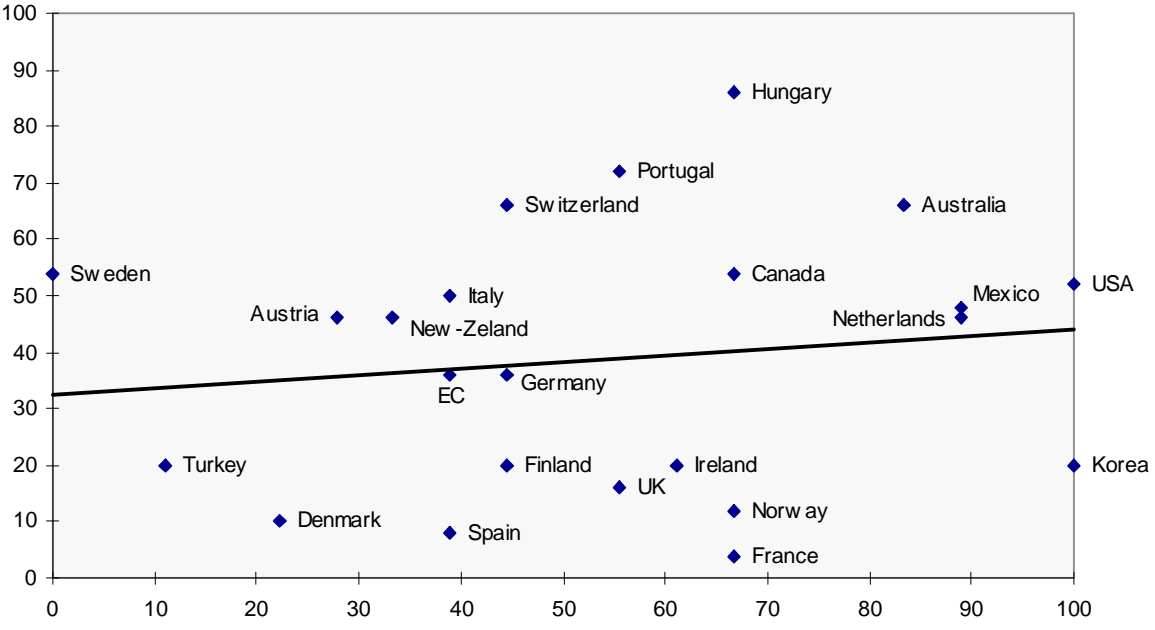
**ANNEX B - COUNTRY RESPONSES TO THE INDICATORS QUESTIONNAIRE -
(This Annex is not available in this document for technical reasons and will be made
available as a room document on 29 June)**

APPENDIX C: CORRELATIONS BETWEEN INDICATOR SCORES

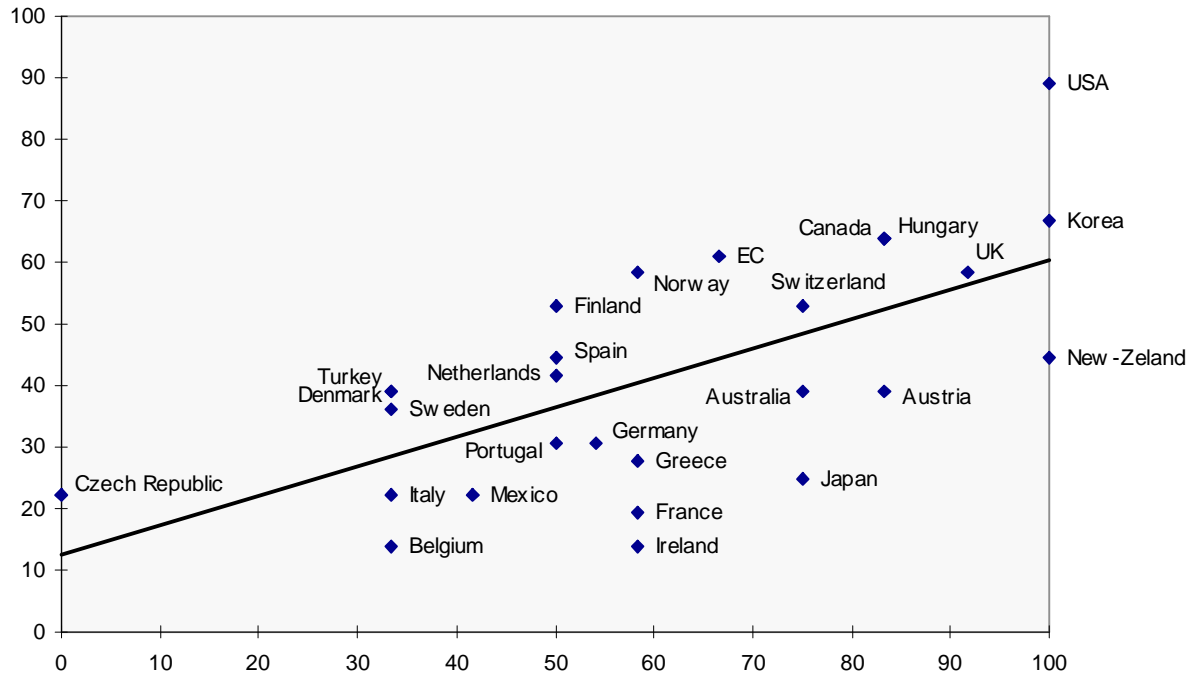
RIA/Consultation



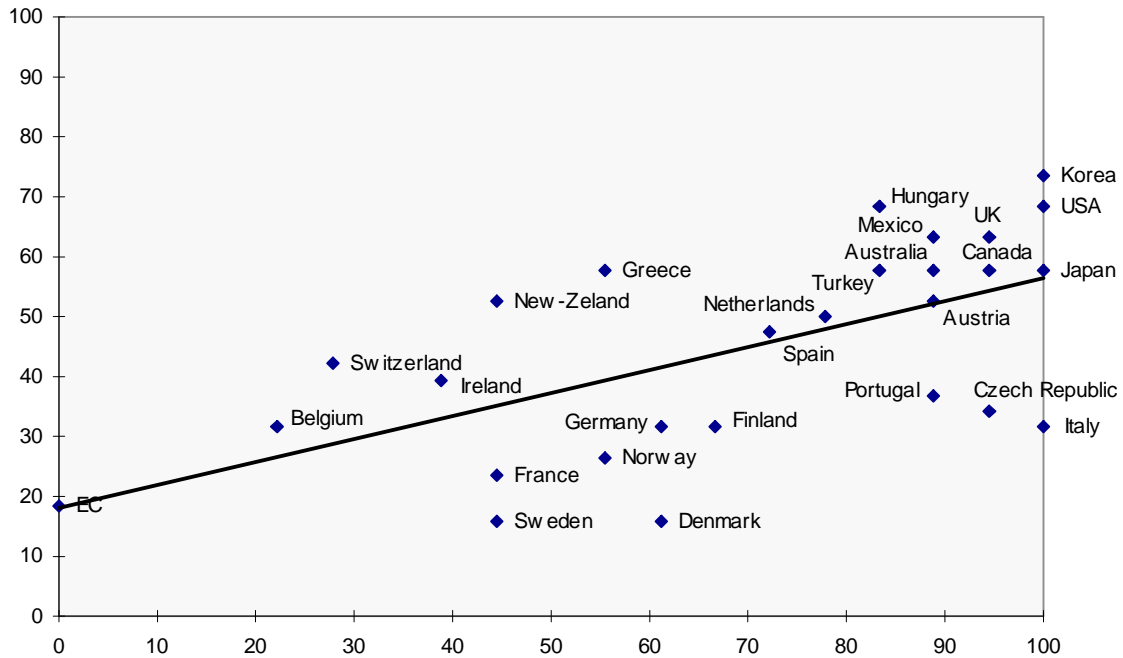
RIA/Critical approach to the regulatory decision



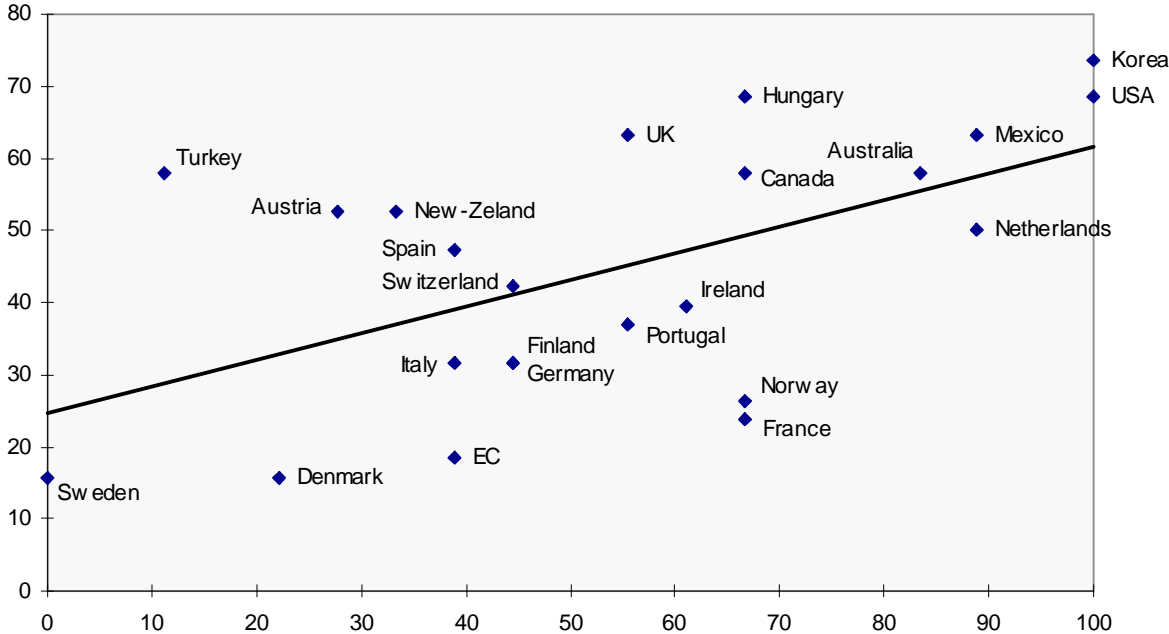
Consultation/Transparency



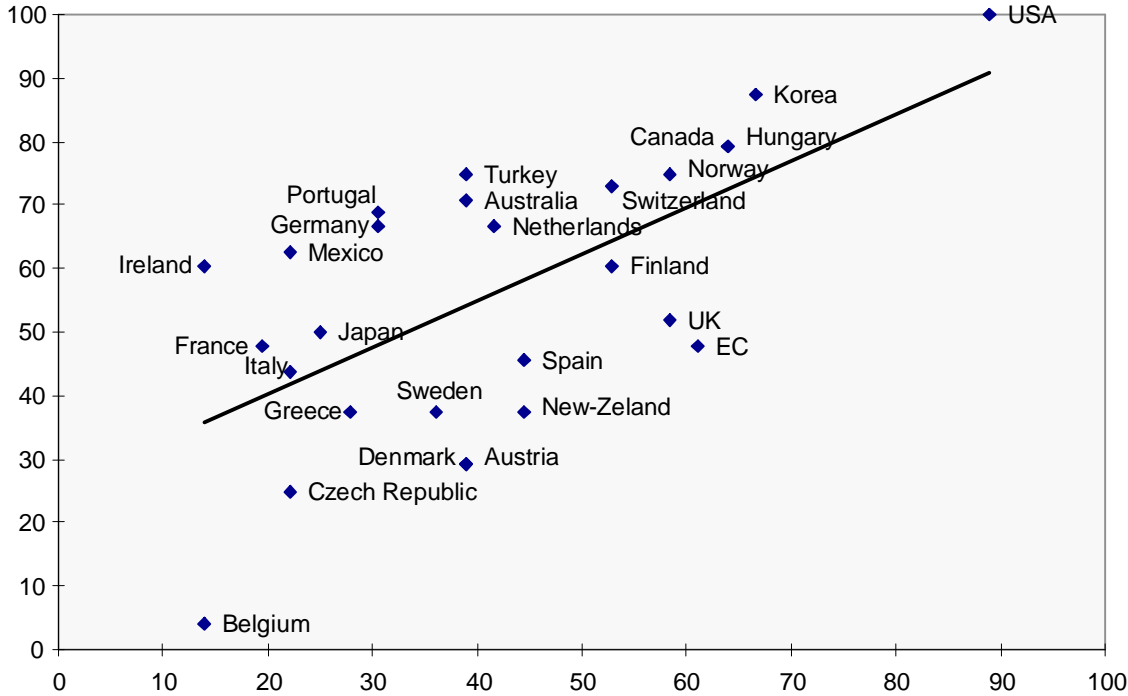
**Policy and organisational commitment
/Index of review activity**



RIA/Index of review activity



Tranparency/Structured rev



Pol. & org comm/Effectiveness of review Mechs

