Better Regulation Practices across the European Union

OECD

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Foreword

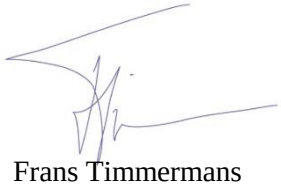
In 2008, the OECD and the European Union jointly launched the EU 15 Project to assess the capacities for effective regulatory management across the EU through individual reviews of 15 member states. Since then, however, new challenges have emerged. There has been a significant erosion of people's trust in institutions, and citizens are increasingly sceptical about the capacity of governments to address a growing number of concerns, including rising inequalities, migration flows, climate change and the disruption caused by new technologies such as Artificial Intelligence. These challenges, along with the regulatory uncertainty caused by Brexit, put increasing pressure and demands on the EU and its member states as they seek to make regulations work better for their citizens.

The 2019 *Better Regulation Practices across the EU report* highlights that regulatory policy is one of the main government policy levers for improving societal welfare. It must not only be responsive to a changing environment, but also proactively shape this environment. Without a system in place to update regulations and anticipate new developments, governments will not be able to keep pace with rapid change. In this respect, it is also important to engage citizens and all stakeholders in the development of laws. This will not only increase understanding of how new laws work in practice, but also lead to greater compliance, engagement and trust. Moreover, given the complexity of today's environment, governments cannot address regulatory challenges at the domestic level alone. The quality of laws and regulations in the EU also depends on the quality of the regulatory management systems, both in member states and in EU institutions.

Upon the request – and with the support – of the European Union, the OECD has analysed the application of all 28 EU member states' regulatory management tools to EU-made laws and regulations. Using the OECD Indicators of Regulatory Policy and Governance, this report tracks progress and highlights countries' best practices in order to improve regulatory management in each member state and in the overall EU.

The EU already stands out for the breadth and depth of its regulatory and economic integration, as well as for its efforts to ensure that its legislation works for citizens and the smooth functioning of the single market. This report should inspire EU member states to further optimise the management of domestic – as well as EU – laws and regulations with the ultimate goal of maximising the welfare of their citizens. We hope that this report will be a useful tool in this process and will contribute to design, develop and deliver better regulatory policies for better lives for all EU citizens.

Angel Gurría
Secretary-General, OECD



Frans Timmermans
First Vice-President, European Commission

Acknowledgements

This report has been prepared by a team of analysts from the OECD Regulatory Policy Division led by Christiane Arndt-Bascle under the direction of Nick Malyshev, Head of the Regulatory Policy Division and Céline Kauffmann, Deputy Head of the Regulatory Policy Division, and the overall leadership of Marcos Bonturi, Director for Public Governance.

The main authors include Christiane Arndt-Bascle, Paul Davidson, Benjamin Gerloff, and Rebecca Schultz. Significant inputs were provided by Céline Kauffmann and Daniel Trnka. Composite indicators and country profiles for OECD member countries are based on those published in the *OECD Regulatory Policy Outlook 2018*. Composite indicators and country profiles for the five EU members that are not members of the OECD (Bulgaria, Croatia, Cyprus,[1] Malta and Romania) are published for the first time and benefited from significant inputs from Daniel Trnka and Yola Thuerer.

We thank the members of the OECD Regulatory Policy Committee and BIAC for their comments. The survey and indicators methodology was developed in strong co-operation with the Steering Group on Measuring Regulatory Performance through a series of meetings and consultations.

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The work on regulatory policy is conducted under the supervision of the OECD Regulatory Policy Committee whose mandate is to assist both members and non-members in building and strengthening capacity for regulatory quality and regulatory reform. The Regulatory Policy Committee is supported by staff within the Regulatory Policy Division of the Public Governance Directorate. The directorate's mission is to help governments at all levels design and implement strategic, evidence-based and innovative policies to strengthen public governance, respond effectively to diverse and disruptive economic, social and environmental challenges and deliver on government's commitments to citizens.

[1] Note by Turkey:
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Acronyms and abbreviations

ATR	Dutch independent advisory body (*Adviescollege Toetsing Regeldruk*)
DG	Directorate-General (European Commission)
EC	European Commission
EIS	Electronic Coordination System for Draft Legislation (Estonia)
EPRS	European Parliamentary Research Service
EU	European Union
FCRIA	Finnish Council of Regulatory Impact Analysis
ICT	Information, Communications and Technology
IIA	Inception impact assessment (European Commission)
iREG	Indicators of Regulatory Policy and Governance
MEUSAC	Malta-EU Steering Action Committee
NBRC	Norwegian Better Regulation Council
NKR	German national regulatory control body (*Nationaler Normenkontrollrat*) (Germany)
OECD	Organisation for Economic Co-operation and Development
REFIT	Regulatory Fitness and Performance programme
RIA	regulatory impact assessment
RIAB	Regulatory Impact Assessment Board (Czech Republic)
RPC	Regulatory Policy Committee (United Kingdom)
RSB	Regulatory Scrutiny Board (Europe)
SBRC	Swedish Better Regulation Council
SME	Small and Medium Enterprises

Reader's guide

The data presented in this report, including the composite indicators, are the results of the 2014 and 2017 indicators of Regulatory Policy and Governance (iREG) surveys, and their extension to the five EU Member States that are not OECD member countries: Bulgaria, Croatia, Cyprus,[1] Malta, and Romania.

The iREG surveys gathered information at two points in time: as of 31 December 2014 and 31 December 2017. Data for 2014 are from 34 OECD member countries (which include 21 EU Member States) and the European Union, which formed the basis of the *2015 Regulatory Policy Outlook* (OECD, 2015[1]). Data from the 2017 survey are from the 38 OECD member and accession countries (at the time of data collection), and the European Union. This formed the basis of the *2018 Regulatory Policy Outlook* (OECD, 2018[2]). This report extends the coverage to include the five EU Member States that are not OECD member countries. The surveys focus on countries' regulatory policy practices as described in the *2012 OECD Recommendation of the Council on Regulatory Policy and Governance* (OECD, 2012[3]). Please note that the 2017 edition of iREG also features new survey questions on the institutional setup of regulatory policy and oversight. Results from these new questions form part of Chapter 1, but do not cover the five EU Member States that are not members of the OECD. Please note that reforms undertaken in EU Member States after 31 December 2017 are not reflected in the report.[2] The methodology of the survey and the composite indicators are described in detail in Annex B.

The surveys investigate in detail three principles of the 2012 Recommendation: stakeholder engagement, regulatory impact assessment (RIA) and *ex post* evaluation. The composite indicators are presented in the respective chapters that follow. For each of these areas, the surveys have collected information on formal requirements and have gathered evidence on their implementation. This information forms the basis for the recommendations in the individual country profiles in Chapter 5. OECD country reviews would be required to provide more in-depth assessments of the quality of country practices as well as tailor-made recommendations for reforms.

While stakeholder engagement, RIA, and *ex post* evaluation are all very important elements of regulatory policy, they do not constitute the whole better regulation framework. For instance, other principles from the *2012 Recommendation* are currently not assessed, and it is also recognised that countries may have quite disparate approaches to achieving better regulation. Some EU countries for example have dedicated policies for administrative burden reduction and administrative simplification in place that are not fully covered in this report (OECD, 2010[4]).

The surveys focus on the processes of developing laws (both primary and subordinate) that are carried out by the executive branch of the national government and that apply to all policy areas. The share of legislation initiated by the parliaments of each EU Member State is reported in Annex A. Questions regarding *ex post* evaluation cover all national regulations regardless of whether they were initiated by parliament or the executive. Results for the European Union apply to all acts (regulations, directives and

implementing and delegated acts) initiated by the European Commission, who is the executive of the European Union. It proposes new legislative acts, which are adopted by the European Parliament and the Council of the EU, usually through the ordinary legislative procedure. Throughout this procedure, the Council, comprised of representatives from EU Member States, and the European Parliament can suggest amendments to the European Commission's proposals. While the Council and the European Parliament can invite the European Commission to submit a legislative proposal, the European Commission is the sole initiator of legislation in the EU system. Further information on the EU's regulatory system and the legislative process are provided in the country profile of the EU in Chapter 5. The different types of EU legislative acts and subordinate regulations of the EU's legal framework are discussed in Chapter 1.

Progress towards achieving the *2012 Recommendation* is measured via composite indicators based on information from the iREG survey. The three composite indicators provide an overview of countries' practices in the areas of stakeholder engagement, regulatory impact assessment (RIA) and *ex post* evaluation. Each indicator comprises four equally important and therefore equally weighted categories:

- *Systematic adoption* records formal requirements and how often these requirements are conducted in practice.
- *Methodology* presents information on the methods used in each area, e.g. the type of impacts assessed or how frequently different forms of consultation are used.
- *Oversight and quality control* records the role of oversight bodies and publically available evaluations.
- *Transparency* records information which relates to the principles of open government, e.g. whether government decisions are made publically available.

The maximum score for each category is 1 and the maximum score for the aggregate indicator is 4. The questionnaire and indicators methodology were developed in close co-operation with delegates to the Regulatory Policy Committee and the Steering Group on Measuring Regulatory Performance. The methodology for the composite indicators draws on recommendations provided in the 2008 JRC/OECD Handbook on Constructing Composite Indicators (OECD/EU/JRC, 2008[5]). Further information on the methodology is available at http://www.oecd.org/gov/regulatory-policy/indicators-regulatory-policy-and-governance.htm, as well as via an OECD working paper (Arndt et al., 2015[6]). Further analysis of the 2014 iREG survey results were made available through a subsequent working paper (Arndt et al., 2016[7]).

The results of composite indicators are always sensitive to methodological choices, unless country answers are homogeneous across all practices. It is therefore not advisable to make statements about the relative performance of countries with similar scores. Instead composite indicators should be seen as a means of initiating discussion and stimulating public interest (OECD/EU/JRC, 2008[5]). To ensure full transparency, the methodology for constructing the composite indicators and underlying data as well as the results of the sensitivity analysis to different methodological choices, including the weighting system, has been made available publicly on the OECD website.

Composite indicators are useful in their ability to integrate large amounts of information into an easily understood format (Freudenberg, 2003[8]). However, by their very nature, cross-country comparable indicators cannot be context specific and cannot fully capture the complex realities of the quality, use and impact of regulatory policy. In-depth country reviews are therefore required to complement the indicators. Reviews provide readers with a more detailed analysis of the content, strengths and shortcomings of countries' regulatory policies, as well as detailed and context-specific recommendations for improvement.

It is also important to bear in mind that the indicators should not be interpreted as a measurement of the quality of regulation itself. While the implementation of the measures assessed by the indicators aim to deliver regulations that meet public policy objectives and will have a positive impact on the economy and society, the indicators themselves do not assess the achievement of these objectives.

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[2] For example, Portugal made extensive reforms to its regulatory policy through a new Resolution of the Council of Ministers in June 2018. The Resolution makes it mandatory for ministries to assess the impacts on citizens as well as businesses for all primary laws and subordinate legislation. *Ex post* reviews and RIA of EU legislation may also be made under request. In addition, Portugal improved the tools, training and guidance for RIA.

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Executive summary

Almost a decade after the OECD reviewed the better regulation practices in 15 EU countries, this report presents an up-to-date analysis of the use of core regulatory policy tools across all 28 EU Member States and the European Union. In 2017, both the European Union and EU Member States show a strong overall political commitment to regulatory reform. All EU Member States have adopted regulatory policies promoting government-wide regulatory reform, covering various areas of regulatory governance. Regulatory policy in the European Union progressed under the better regulation agenda, which played a crucial role in shaping the current Commission's regulatory processes.

For the first time, the OECD has assessed stakeholder engagement, regulatory impact assessment (RIA), and *ex post* evaluation systematically across all EU countries and the European Union, drawing on its composite indicators of regulatory policy and governance. EU countries have, on average, invested less across the three assessed areas than non EU countries. The difference is particularly striking for the area of *ex post* evaluation, indicating that EU Member States have yet to develop effective systems to review existing regulations. While therefore more progress is needed, many EU countries have significantly improved their regulatory management practices over the last decade. For instance, substantive investments have been made by EU Member States to seek input on draft laws from affected parties, especially via electronic communication. Furthermore, nearly all EU Member States have embedded RIA as a core part of their regulatory management toolkit. Although the European Union as an institution scores favourably compared to most of the Member States, the implementation of regulatory management tools can still be improved by all.

EU countries do not usually facilitate the early engagement of their citizens in the European Commission's regulatory proposals. The Commission uses a range of different tools to engage with stakeholders at various points during policy development. EU countries and their citizens thus have opportunities to participate, provide evidence, and improve EU laws, including at early stages of their development. Many member countries, however, do not sufficiently inform their stakeholders of these opportunities to provide input. Instead, most stakeholder engagement with EU laws occurs after the Commission has made a regulatory decision via individual transposition procedures. At this stage, the focus of consultation is generally on the implementation of EU directives, rather than on their expected societal impacts. To ensure that EU laws benefit fully from stakeholder consultation, Member States should provide better evidence and information during regulatory design to complement the existing practices of the European Commission.

Where Member States' regulatory practices are poor, the potential benefits of EU laws will be reduced. For example, if EU laws are implemented in a piecemeal manner, the resulting regulatory burdens will be higher than they should be, hampering investment and reducing competition, as well as posing a risk to the single market. Where EU countries include additional regulatory measures in excess of those provided in EU laws,

it is important that these measure be subject to appropriate consultation and impact assessment as part of their design, to ensure that the anticipated gains from EU laws are realised.

With respect to domestic law-making in Member States, stakeholder engagement often takes place too late in the policy development process to be of real value. Perhaps more striking is that, in some Member States, stakeholder engagement is still not sufficiently broad. The vast majority of EU countries have heavily invested in the establishment of online government portals to better communicate with affected parties when developing laws. While praiseworthy, these investments are not yielding their full potential benefits. For example, stakeholders are generally not informed by policy makers about how they have helped to shape and, ultimately, improve regulatory proposals. This may lead to disenchantment among stakeholders, and possibly to the rejection of laws, and to diminishing voluntary compliance and engagement in future stakeholder consultations. Greater accountability for the results of consultation is not only needed in EU countries but also in OECD countries more broadly, the *2018 Regulatory Policy Outlook* found.

Many EU countries are also not reaping the full benefits of using regulatory impact assessment to aid domestic law-making. They do not systematically assess alternatives to the proposed regulatory option, and where a triage procedure exists, it tends to focus on the cost to business only when determining a proposal's potential impact and the corresponding level of assessment required. The RIA process still begins only after regulatory proposals are developed and decided upon by governments. Furthermore, there is no real incentive to change practices, as there are little or no consequences to producing poor quality RIAs. Despite its instrumental role, oversight is still one of the least developed features of regulatory policy in many EU countries.

All EU countries and the European Union itself remain more adept at making laws than at ensuring they continue to deliver benefits to communities. Laws are not systematically subject to *ex post* evaluations in almost all EU countries, creating a risk that obsolete laws remain in force. This represents a substantive waste of resources to the economy: to governments, in terms of unnecessary inspections and enforcement; to businesses, in terms of excessive regulatory burdens; and to citizens, in terms of reduced choice, increased prices, and exposure to potential risks when regulations do not keep pace with societal changes. Where *ex post* evaluations are conducted, they tend to be unstructured, and do not systematically allow for public consultation or impact analysis. Worse still, *ex post* evaluations do not systematically assess whether regulatory goals have been achieved—something of vital importance for establishing whether laws remain appropriate. These findings are in line with the findings for OECD countries.

The better regulation agendas of EU countries and of the European Union need constant attention – a 'set and forget' model does not work, just as it does not work for laws themselves. Countries need to strengthen their regulatory processes and the institutions involved. At a time of fiscal stringency and heightened global uncertainty, regulatory policy remains a key government tool for ensuring the safety and well-being of citizens while stimulating innovation and economic growth and prosperity. Despite some improvements, much work remains to be done to reap the rewards of better regulation.

Chapter 1. Better regulation and institutional oversight across the European Union

In the European Union (EU), regulatory policy was advanced under the better regulation agenda, which played a crucial role in shaping the current Commission's regulatory processes. At the same time, many EU Member States recognised better regulation as an important part of an effective public governance. This chapter explores the history and recent developments of the EU better regulation agenda and presents an overview of the 2018 Indicators of Regulatory Policy and Governance results for all EU Member States and the European Union. It also covers the application of individual EU Member States' regulatory management tools to EU-made laws and regulations. It concludes by providing information on the institutional setup for regulatory oversight and different oversight functions currently carried out across EU Member States.

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Introduction

Regulating represents a central part of government activity that affects all areas of business and citizen's lives. It is therefore a crucial determinant of any society's welfare. When done well, regulations can improve societal wellbeing, improve business competition, and enhance environmental outcomes. When done poorly, regulation unnecessarily increases burdens on both business and regulators, and can unduly put citizen's lives at risk. Regulatory policy is centrally important to ensure governments make laws that improve citizens' welfare.

The recently released *OECD Regulatory Policy Outlook 2018* found that OECD member countries continue to invest in regulatory policy. That said, it was also highlighted that much room for improvement remains in both the design and application of countries' regulatory management policies (OECD, 2018[1]). A number of synergies exist between this report – which focuses exclusively on the European Union Member States and the European Union – and the Outlook. The principal one is that the same regulatory management tools are assessed on a consistent basis, allowing for the comparison of results. Separately, this report builds on previous OECD research which examined the regulatory management practices of 15 EU Member States, prior to the latest EU accession rounds (OECD, 2009[2]). In particular, this report assesses individual EU Member States' requirements and procedures in relation to the negotiation and transposition of EU directives and regulations.

Both the OECD and the European Union have long-recognised the potential of regulatory policy (OECD, 1995[3]; European Commission, 2002[4]). Decades of research at the OECD culminated in the 2012 *OECD Recommendation on Regulatory Policy and Governance*, which set the normative framework to measure regulatory performance in member countries (OECD, 2012[5]). Regulatory policy in the European Union was advanced under the better regulation agenda, which played a crucial role in shaping the current Commission's regulatory processes (European Commission, 2015[6]). The *OECD Recommendation* and the EU better regulation agenda share the same objectives, approaches and key principles. Both have a particularly strong focus on regulatory oversight, stakeholder engagement, regulatory impact assessment (RIA), and *ex post* evaluation, as critical pillars of regulatory quality.

The analysis in this report is based on the OECD indicators of Regulatory Policy and Governance (iREG) survey. The iREG survey results in the construction of composite indicators relating to the three assessed areas of stakeholder engagement, RIA, and *ex post* evaluation. This report extends the iREG survey to include all EU Member States for the first time. The survey scope and indicators design are discussed in the accompanying reader's guide to help provide context about the results.

This report assesses EU Member States' regulatory management policies across the above areas, and is structured as follows:

- The remainder of this chapter explores the history and recent developments of the EU better regulation agenda and presents an overview of the composite indicator results. It also presents important information about the application of individual Member State's regulatory management tools to EU-made laws and regulations. It concludes by explaining the importance of regulatory oversight in the EU context, and provides information on the institutional setup for regulatory oversight and different oversight functions currently carried out across EU Member States. Building on the findings of EU Member States' oversight of regulatory

management tools, the tools' effectiveness are then discussed in the chapters that follow.

- Transparency and open participation in the regulatory process are of fundamental importance to the acceptance of and compliance with regulations. With that in mind, Chapter 2 of this report examines the regulatory requirements and implementation of stakeholder engagement practices across the EU Member States on their own regulatory proposals, as well as those of the European Commission.
- Impact assessment is at the centre of providing an evidence base of the expected economic, social, and environmental impacts of regulatory proposals. The requirement to undertake RIA in EU Member States is analysed in Chapter 3 of this report. It also includes a discussion of the application of individual Member State's RIA requirements to regulatory proposals of the European Commission.
- Reviews of existing regulations help to ensure that they remain appropriate over time. Chapter 4 discusses the requirements and different agents involved in *ex post* evaluations across EU Member States.
- Chapter 5 provides a two-page profile for all EU Member States and the European Union. The profiles offer an overview of regulatory practices and the institutional setup for regulatory oversight. The profile also provides information on the use of regulatory management tools for EU-made laws in each Member State.

Key findings

Both the European Union and EU Member States show a strong overall political commitment to regulatory reform. Beginning in the 2000s and recently reinforced through the Better Regulation Package and the 2016 Interinstitutional Agreement, the European Commission, the European Parliament and the Council recognised stakeholder engagement, RIA and *ex post* evaluation as core elements to improve regulatory quality. All EU Member States currently have adopted regulatory policies promoting government-wide regulatory reform, covering various areas of regulatory governance. While policies covering RIA, consultation as well as administrative simplification and burden reductions are prevalent in almost all Member States, *ex post* evaluation is less common.

Despite considerable overlap between memberships, the EU 28 have on average invested less across the areas of stakeholder engagement, RIA, and *ex post* evaluation for both primary and subordinate laws, compared with the OECD average. The difference is particularly striking for the area of *ex post* evaluation, indicating that EU Member States are yet to develop effective systems to review existing regulations. The European Union scores higher than most of the EU countries across all three areas.

EU Member States do not currently avail themselves of the opportunity to influence European Commission draft laws when they are introduced into the Council through formal stakeholder engagement or RIA requirements at the negotiation stage. For example, the majority of EU countries does not use RIA to underpin their suggested amendments with evidence on regulatory impacts on the level of the individual Member States, resulting from a regulatory proposal of the European Commission.

Individual Member States generally apply their own regulatory management tools in transposing EU directives, which are subject to standard domestic law-making procedures. Almost all EU countries have requirements in place to conduct stakeholder engagement and RIA to inform the transposition of EU directives in their specific national implementation context.

Regulatory oversight is a critical component of effective regulatory frameworks to foster the implementation of regulatory policy in practice. Despite its instrumental role, oversight is still one of the least developed features of regulatory policy across the EU. While all EU countries have established a body that is responsible for the promotion of regulatory policy as well as monitoring and reporting on regulatory reform in general, oversight is still patchy, and focuses heavily on the scrutiny of Regulatory Impact Assessment (RIA) while neglecting other relevant elements of regulatory policy.

Institutional arrangements to embed regulatory oversight capacity are diverse. A majority of regulatory oversight bodies in EU countries are located within the executive. Bodies outside the executive, however, also engage in regulatory oversight. The past 20 years have seen a surge in "arm's length" regulatory oversight bodies across Europe. Their institutional setup provides safeguards from government interference in their regulatory oversight activities, but they remain connected and accountable to government, e.g. through a secretariat that is embedded in their sponsoring institution. As the ultimate authority approving legislation, parliaments also have a crucial role to play in regulatory policy and oversight. Contrary to its eminent place in the legislative process, parliaments are not very involved in regulatory oversight across the EU.

Regulatory policy in the EU and EU Member States

Regulatory policy in the European Union

Regulatory policy in the EU has been developed under the banner of better regulation. The introduction of the EU's better regulation agenda in its current form dates back to the early 2000s. In the early stages, the European Commission's better regulation agenda was strongly underpinned by the rationale to simplify and improve the quality of EU legislation (European Commission, 2002[4]) as well as to strengthen the competitiveness of the European economies (European Commission, 2005[7]). The European Commission also recommended that EU Member States "establish national better regulation strategies and, in particular, impact assessment systems for the integrated assessment of economic, social and environmental impacts, along with the supporting structures adapted to their national circumstances" (European Commission, 2005[7]). Central pillars of the EU's better regulation agenda include:

- The design of a standardised process to consult external stakeholders and the public throughout the development of the Commission's regulatory proposals (see Chapter 2)
- The introduction of a mandatory *ex ante* impact assessment procedure during the development of all major EU regulatory initiatives (see Chapter 3)
- The promotion of the systematic use of *ex post* evaluations to review existing regulations (see Chapter 4), as well as a comprehensive program to simplify the stock of regulations (REFIT programme)

Beyond the elements covered in this report, the Commission's better regulation approach also emphasises more EU-specific aspects. In particular, strengthening subsidiarity and proportionality of EU legislation has been a central element of recent better regulation initiatives (European Commission, 2017[8]).

With its 2015 Better Regulation Package, further refined in 2017, the Commission renewed its political commitment towards the central elements of its better regulation policy, whilst introducing significant changes to its regulatory framework. The Package included new guidelines for conducting consultations, impact assessments, and *ex post* evaluations. Other changes included reforms to the Commission's oversight mechanism for scrutinising RIA and *ex post* evaluations (European Commission, 2015[6]).

While the European Commission is solely responsible for initiating EU legislation, the co-legislators, i.e. the Council of the EU comprised of Member States' representatives and the European Parliament, negotiate and adopt final proposals through legislative procedures. All three institutions have increasingly sought to develop a common approach towards better regulation. This led to the adoption of Interinstitutional-Agreements recognising the importance of public stakeholder consultation, *ex post* evaluation of existing legislation and impact assessments to improve the quality of EU legislation (European Parliament, Council of the European Union, European Commission, 2016[9]). The co-legislators, specifically the European Parliament and to a lesser extent the Council, have also initiated their own approaches towards the application of regulatory management.

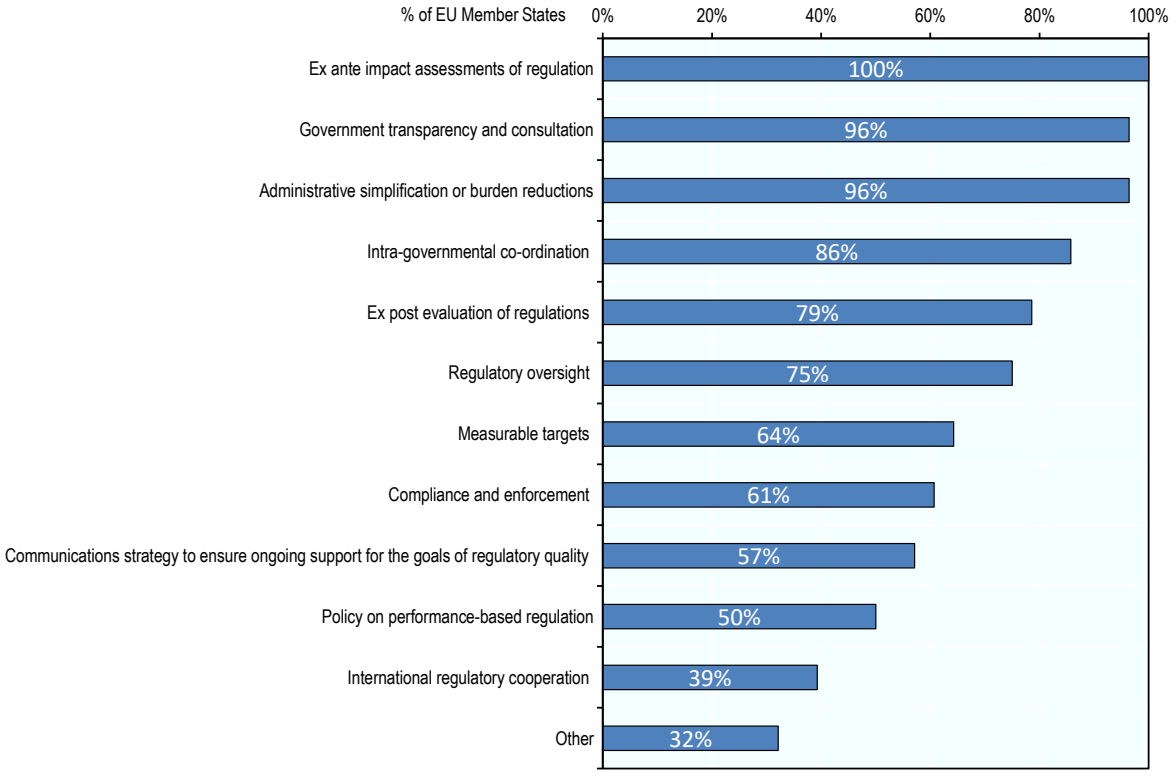
Regulatory policy in the EU Member States

A previous OECD review of better regulation policies among 15 EU Member States almost a decade ago has shown that better regulation is a concept that "is recognised as an important part of effective public governance" by governments and external stakeholders (OECD, 2009[2]). The drivers to initiate better regulation strategies, however, varied from country to country. For instance, economic growth, competitiveness and the needs of businesses have been prominent reasons for engaging in better regulation policies. In other EU Member States, justifications for better regulation initiatives have also been associated with societal goals such as sustaining quality public services and to reduce societal burdens (OECD, 2009[2]).

The survey results confirm that EU Member States currently display, at least in principle, a strong political commitment towards regulatory policy. All EU countries report that they have adopted regulatory policies promoting government-wide regulatory reform or regulatory quality (Figure 1.1).

The EU countries' better regulation policies have a number of similarities with the regulatory management tools examined in this report. For instance, all EU Member States have a policy in place covering the area of *ex ante* impact assessment, and in almost all EU countries, regulatory policies cover government transparency and consultation. *Ex post* evaluation of regulations, however, is less common (22 Member States).

Figure 1.1. Areas covered in regulatory policy across EU Member States



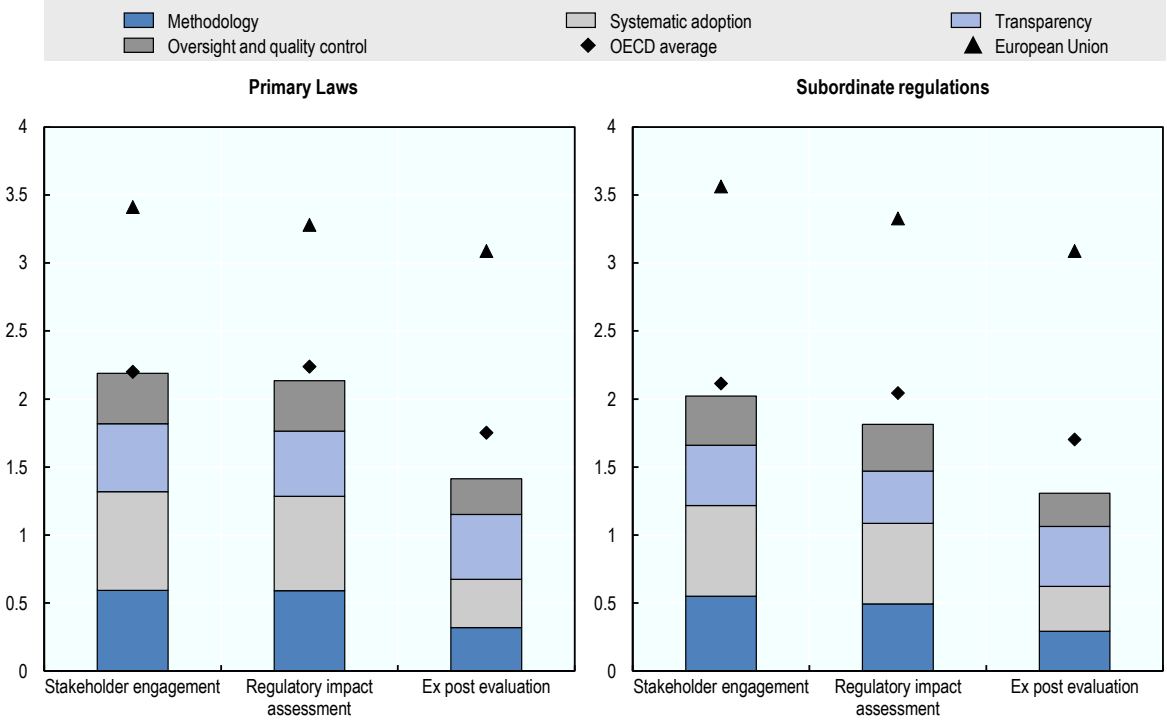
Note: Data is based on 28 EU Member States.
Source: Indicators of Regulatory Policy and Governance Survey 2017, http://oe.cd/ireg.

The composite indicator scores of the iREG survey show that EU Member States have put systems in place to conduct stakeholder engagement and to a lesser extent RIA, but that *ex post* evaluation systems are not currently commonplace (Figure 1.2). Further information about the construction of the composite indicators is available in the reader's guide and Annex B.

An important finding is that despite considerable overlap between memberships, the EU 28 average composite indicators scores are lower across all areas for both primary and subordinate laws, compared with the OECD average. The difference is particularly striking for the area of *ex post* evaluation, indicating that EU Member States are yet to develop effective systems to review existing regulations. The European Union scores substantively higher than the EU 28 average across all three assessed areas. Composite indicator scores for each EU Member State are presented in the detailed chapters on stakeholder engagement, RIA, and *ex post* evaluation, respectively.

It should however be noted that three assessed areas do not constitute the entire better regulation framework. EU Member States' regulatory policies also cover a number of other areas to varying degrees. For instance, 27 Member States have adopted elements of administrative simplification and burden reduction strategies. Policies covering intra-governmental co-ordination (24 Member States) and regulatory oversight (21 Member States) are also relatively widespread. Similarly to the OECD overall (OECD, 2015[10]), regulatory policies dedicated to the implementation stage of regulations, i.e. on compliance and enforcement and performance-based regulation tend to be less common.

Figure 1.2. Composite indicator scores, EU 28 averages, 2018



Notes: The OECD average is based on the 34 countries that were OECD members in 2014, which included 21 of the current 28 EU Member States. Data for 2018 includes the remaining EU Member States of Bulgaria, Croatia, Cyprus, Malta and Romania. The more regulatory practices as advocated in the 2012 Recommendation a country has implemented, the higher its iREG score.
Source: Indicators of Regulatory Policy and Governance Survey 2017, http://oe.cd/ireg.

Regulatory management at the interface between EU Member States and the European Union

The regulatory management systems of the EU institutions and the EU Member States need to be mutually reinforcing in order to operate effectively and efficiently. This is prefaced on the fact that regulatory policies emanating from the EU naturally tend to affect Member States. Anticipated economic benefits at the EU level could easily dissipate where regulatory management systems are weak in individual Member States. This risk is clearly recognised by the European Commission: "The European Union can deliver on its policies only if the Member States apply and implement EU law correctly and without undue delay" (European Commission, 2018[11]).

Box 1.1. The main types of EU legislative acts and subordinate regulations

Two main types of EU legislative acts are regulations and directives. Both the nature of and processes for these laws have important differences. The differences are relevant to the regulatory management tools that individual Member States employ when implementing these laws.

EU regulations are directly applicable in all Member States and binding in their entirety. Regulations are used most commonly where it is important to achieve a uniform implementation of a policy intervention such as in the internal market or the governance of mergers. They leave individual Member States limited scope to determine how they implement these laws. *EU directives* on the other hand, afford Member States considerable latitude to choose the method and form of implementation. They are binding on the Member States to which they are addressed in respect of the result to be achieved but the specific form and methods are left to national authorities to decide.

The main types of EU subordinate regulations are delegated acts and implementing acts. In the legislative acts they adopt, the European Parliament and the Council can empower the Commission to adopt acts to supplement or amend non-essential parts of EU legislative acts (in case of delegated acts) or where uniform conditions for implementing legally binding acts are needed (in case of implementing acts). Both delegated and implementing acts may take the form of either regulations, directives or decisions.

The European Commission's regulatory process for developing proposals for legislative acts and delegated and implementing acts involves both stakeholder consultation and impact assessment (see Chapters 2 and 3). Once a proposal for a legislative act has been made, the regulation or directive (as the case may be) is subject to the legislative process, where amendments can be negotiated and the EU law then finalised. Delegated and implementing acts are not subject to the legislative process per se. However, delegated acts only enter into force if the European Parliament and the Council have no objections. Additionally, both delegated and implementing acts are usually prepared in consultation with a committee or an expert group comprised of representatives from EU countries.

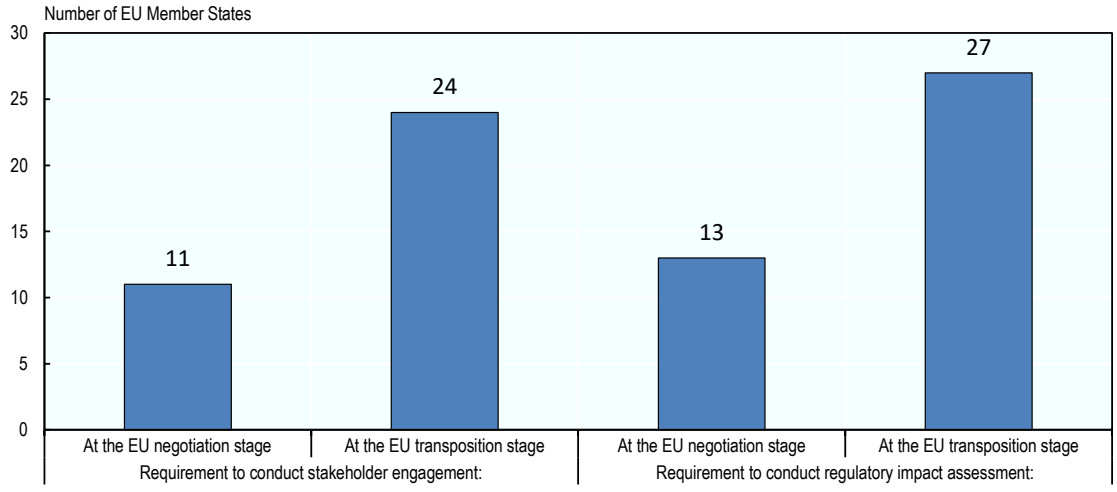
EU regulations take effect in individual Member States once they enter into force. EU directives are subject to an additional transposition procedure. Transposition is the process that individual Member States undertake to incorporate EU directives into national laws. The European Commission checks the legal accuracy of transposition in individual Member States and has the power to commence enforcement proceedings where transposition processes are unduly delayed.

Source: Indicators of Regulatory Policy and Governance Surveys 2017; Website of the European Commission, https://ec.europa.eu/info/law/law-making-process/types-eu-law_en (accessed September 2018); Better Regulation Toolbox, https://ec.europa.eu/info/better-regulation-toolbox_en (accessed September 2018).

The requirements of EU countries to conduct stakeholder engagement and RIA on regulatory proposals of the European Commission are the subject of Chapters 2 and 3, respectively. The discussion below relates to the stage after the Commission has made a regulatory decision, and a draft law passes through the European Parliament and Council. After it becomes an EU law, it is then implemented by individual Member States.

Results from the iREG survey and its extension to all EU Member States indicate that countries generally do not require the use of regulatory management tools to assist them in forming a negotiation position on EU legislative acts (Figure 1.3). However, requirements to conduct stakeholder engagement and/or RIA on EU directives at the transposition stage are far more commonplace (see Chapters 2 and 3 for more details).

Figure 1.3. EU Member States' requirements to conduct stakeholder engagement and RIA on EU-made laws



Note: Data is based on 28 EU Member States.
Source: Indicators of Regulatory Policy and Governance Survey 2017, http://oe.cd/ireg.

The negotiation phase presents a strong opportunity for Member States to directly amend European Commission proposals (as introduced to Council and the European Parliament) before they become EU legislative acts. This has the potential to lead to substantial changes to a Commission's proposal. Stakeholders can engage with regulatory decisions of the Commission directly themselves or indirectly via their respective Member State. With the former, the Commission allows stakeholders to comment on draft legislative proposals and the accompanying final impact assessments after the approval by the College of Commissioners. With regards to the latter, in a complementary manner, stakeholders can contact their Member State who can then present the views on the stakeholders' behalf to the Council.

Despite the complementariness however, results from the iREG survey show that less than half of the EU Member States require either stakeholder engagement or RIA to be conducted at this stage; and of those only Estonia, Finland, Hungary, Italy, Poland, the Slovak Republic, and Slovenia require both. This implies that affected parties cannot directly present their views to their Member State, and have their views heard at the EU level, outside of the Commission's formal processes. Since the original impact assessment of the Commission does not necessarily include an identification of the impacts on individual countries, it means the expected individual Member State impacts may not have been identified or assessed through a domestic impact assessment process. The Council and the European Parliament have, at least in principle, committed themselves to carry out impact assessments in relation to substantial amendments of the Commission's regulatory proposals. Nevertheless, even when such an assessment is carried out, amendments which are put and passed may not be adequately assessed by individual Member States, which may lessen the expected benefits (and/or raise the expected costs) of EU legislative acts for individual countries. These findings raise the issue of how both EU Member States and the EU institutions can better complement the use of each other's regulatory management tools while at the same time avoiding unnecessary duplication or overlap.

The fact that EU Member States generally require the use of regulatory management tools when transposing EU directives is unsurprising. Firstly, by design, EU directives are implemented at the Member State level, and as such are generally subject to the same requirements as any other domestic law (see Chapters 2 and 3). Secondly, the flexibility afforded strongly implies that there are multiple ways to implement EU directives. As there are a potential number of means to achieve the regulatory goal, both RIA and stakeholder engagement are useful tools that governments can avail themselves of to identify the best implementation solution.

Individual Member State governments can assist policy makers to undertake transposition processes on a more consistent basis. In the United Kingdom for instance, bespoke guidance is available to assist ministries in the transposition process of EU directives (Department of Business, Energy & Industrial Strategy (UK), 2018[12]).

Regulatory oversight across the EU

Regulatory oversight is a critical component of effective regulatory frameworks that provides important impulses for the implementation of regulatory policy in practice (OECD, 2018[1]). The *2012 Recommendation* recognises this important role of regulatory oversight. It outlines a wide range of institutional oversight functions and tasks to promote high quality evidence-based decision making and enhance the impact of regulatory policy. These tasks and functions include: quality control; examining the potential for regulation to be more effective; contributing to the systematic improvement of the application of regulatory policy; co-ordination; and training and guidance (see Table 1.1).

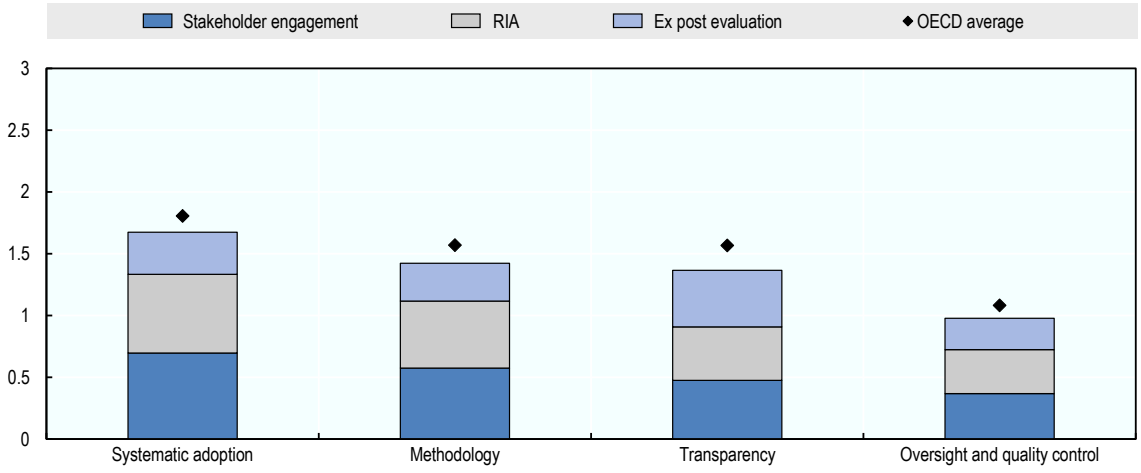
Table 1.1. Regulatory oversight functions and key tasks

Areas of regulatory oversight	Key tasks
Quality control (scrutiny of process)	• Monitor adequate compliance with guidelines / set processes • Review legal quality • Scrutinise impact assessments • Scrutinise the use of regulatory management tools and challenge if deemed unsatisfactory
Identifying areas of policy where regulation can be made more effective (scrutiny of substance)	• Gather opinions from stakeholders on areas in which regulatory costs are excessive and / or regulations fail to achieve its objectives • Reviews of regulations and regulatory stock • Advocate for particular areas of reform
Systematic improvement of regulatory policy (scrutiny of the system)	• Propose changes to improve the regulatory governance framework • Institutional relations, e.g. co-operation with international for a • Co-ordination with other oversight bodies • Monitoring and reporting, including report progress to parliament / government to help track success of implementation of regulatory policy
Co-ordination (coherence of the approach in the administration)	• Promote a whole of government, co-ordinated approach to regulatory quality • Encourage the smooth adoption of the different aspects of regulatory policy at every stage of the policy cycle • Facilitate and ensure internal co-ordination across ministries / departments in the application of regulatory management tools
Guidance, advice and support (capacity building in the administration)	• Issue guidelines and guidance • Provide assistance and training to regulators/administrations for managing regulatory policy tools (i.e. impacts assessments and stakeholder engagement)

Source: OECD (2018), *Regulatory Policy Outlook 2018*, OECD Publishing, Paris.

In line with results for OECD countries, oversight and quality control is the least developed component of the composite indicators in EU Member States. Results from the iREG survey illustrate that oversight and quality control has been established to a lesser extent than the systematic adoption, methodology or transparency of stakeholder engagement, RIA and *ex post* evaluation among EU Members. Oversight and quality control of *ex post* evaluation is particularly weak (Figure 1.4). This mirrors the situation in OECD countries, although on average, OECD countries score slightly higher in all four areas.

Figure 1.4. Category scores of iREG indicators for EU Member States

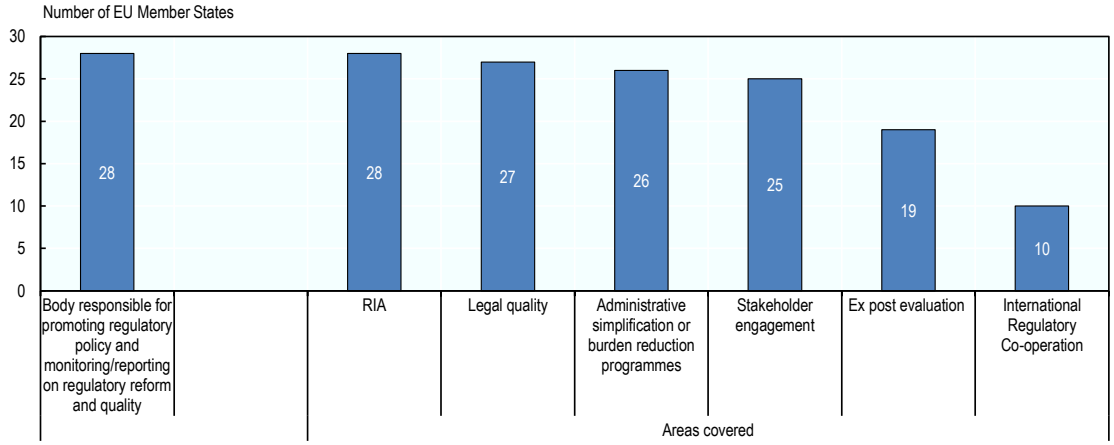


Notes: Scores represent the average of primary laws and subordinate regulations. The maximum score for each regulatory policy tool is one, and the maximum aggregate score is 3. Data is based on 28 EU Member States.
Source: Indicators of Regulatory Policy and Governance Survey 2017, http://oe.cd/ireg.

Regulatory oversight functions carried out in EU countries

Like all OECD countries, all EU Member States have established some oversight capacity (Figure 1.5). In particular, all EU countries report to have established at least one body that is responsible for the promotion of regulatory policy as well as monitoring and reporting on regulatory reform and regulatory quality and for the quality control of RIA. Most EU members have a body responsible for legal quality, administrative simplification/burden reduction, stakeholder engagement and overall legal quality. Bodies that have responsibility for overseeing and promoting *ex post* evaluation and international regulatory co-operation are much less widespread across the EU. Beyond these functions, EU Member States have also institutional arrangements in place to oversee other elements of regulatory policy that are not systematically covered in the OECD iREG survey, such as the transposition of EU law (see Box 1.2).

Figure 1.5. Elements of regulatory policy covered by the oversight body



Note: Data is based on 28 EU Member States.
Source: Indicators of Regulatory Policy and Governance Survey 2017, http://oe.cd/ireg.

Box 1.2. Oversight of the implementation of EU law in Denmark

In 2015, the Danish government set up a new oversight arrangement with the aim to ensure a systematic and uniform approach towards the implementation of EU legislation across government and to avoid additional burdens for businesses through the transposition of EU directives.

The **Inter-Ministerial EU Implementation Committee** examines all national legislative proposals deriving from business-oriented EU legislation to ensure that the new legislation follows five principles for implementation. These principles include, inter alia, provisions to avoid burdens for businesses stemming from the transposition of EU directives and an implementation going beyond the minimum requirements set in EU legislation. The committee is comprised of eight ministers and situated in the Ministry of Employment.

As part of the development of legislation implementing business-oriented EU legislation, all ministries need to submit an implementation schedule to the secretariat of the Committee, explaining whether the five principles have been followed. If a draft law is not in compliance with the five principles, the matter is put before the Inter-Ministerial Committee, which can approve or reject measures going beyond what is required as part of implementing EU legislation.

The external **EU Implementation Council** advises the Committee in its efforts to prevent unnecessary costs for business in implementing new EU legislation. The Council is comprised of 11 Members from business, consumer, employer and employee organisations. It is supported by a secretariat situated in the Danish Agency for Labour Market and Recruitment, which is an agency under the Ministry of Employment. The Council exercises three tasks:

1. In case the Council identifies burdensome future EU legislation, it can advise the government through the Inter-Ministerial EU Implementation Committee to lobby proactively already at the development-stage of EU legislation.
2. The Council advises ministries on the transposition of new EU legislation. As part of this task, all ministries are required to submit an implementation plan to the Council within 4 weeks of the adoption of the directive in Brussels, indicating the planned process and method of implementation. The Council sends recommendations to the ministries on this basis, which are subsequently discussed in the Implementation Committee.
3. It can suggest to the Inter-Ministerial EU Implementation Committee to conduct a "neighbour check", i.e. the ministry shall examine best practices in other Member States and check the existing implementation against methods used in other Member States in order to identify simplification opportunities for businesses. For example, as a result of such a "neighbour check" the Danish Maritime Authority decided in 2016 to phase out 33 shipping rules to reduce economic burden to Danish businesses.

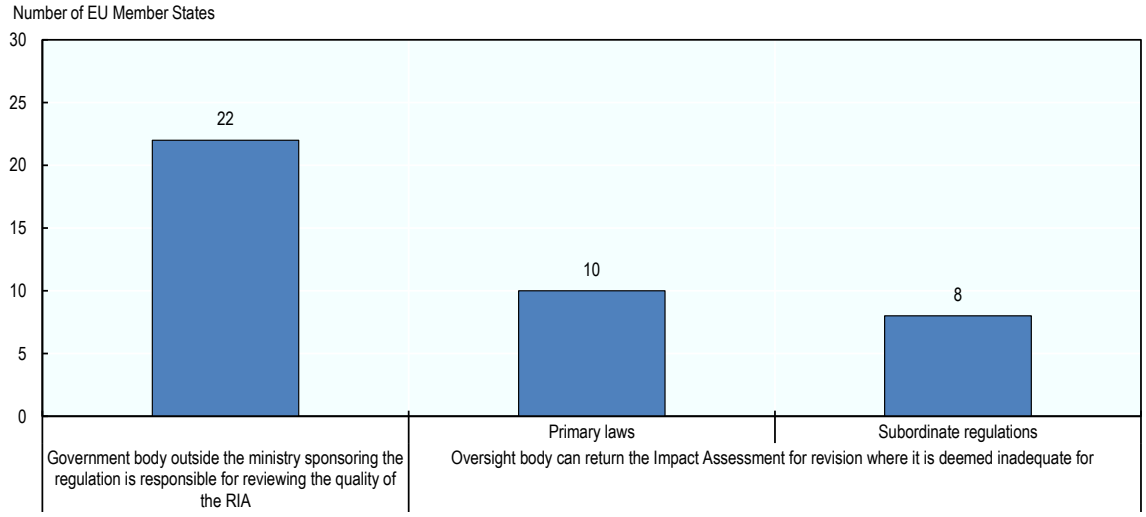
Source: Indicators of Regulatory Policy and Governance Survey 2017, Website of the Danish Inter-Ministerial EU Implementation Committee https://bm.dk/arbejdsomraader/aktuelle-fokusomraader/regeringens-eu-implementeringsudvalg/ (accessed August 2018).

Quality control of regulatory management tools

Quality control is one of the key regulatory oversight functions outlined in the *2012 Recommendation*. Countries use a variety of different mechanisms to carry out quality control of regulatory management tools. They range from providing advice and feedback during the application of the tools, to issuing a formal opinion on their quality that is either kept confidential or made publicly available, to a "sanctioning" or "gatekeeper" function that can stop a regulation from proceeding to the next step in the legislative process if the quality of the tool is deemed inadequate. This sanctioning function can usually be overturned by a specific decision of the competent authority to acknowledge the negative opinion and overturn it. In some cases, a positive opinion is required for a draft regulation or evaluation to proceed and the sanctioning function cannot be overturned.

In line with results at the OECD level, EU Member States' efforts to scrutinise the quality of regulatory management tools is heavily focused on RIA. EU members have invested in mechanisms to scrutinise the quality of RIAs, but few bodies can ask for deficient RIAs to be revised (Figure 1.6). Almost 80% of EU countries (22 out of 28) have established a body outside the ministry sponsoring the regulation that is responsible for reviewing the quality of accompanying RIAs. However, in only about a third of EU countries (10) this body can return a RIA for revision in case it deems that the RIA quality is insufficient. On the European level, the European Commission's Regulatory Scrutiny Board can return inadequate RIAs for revision.

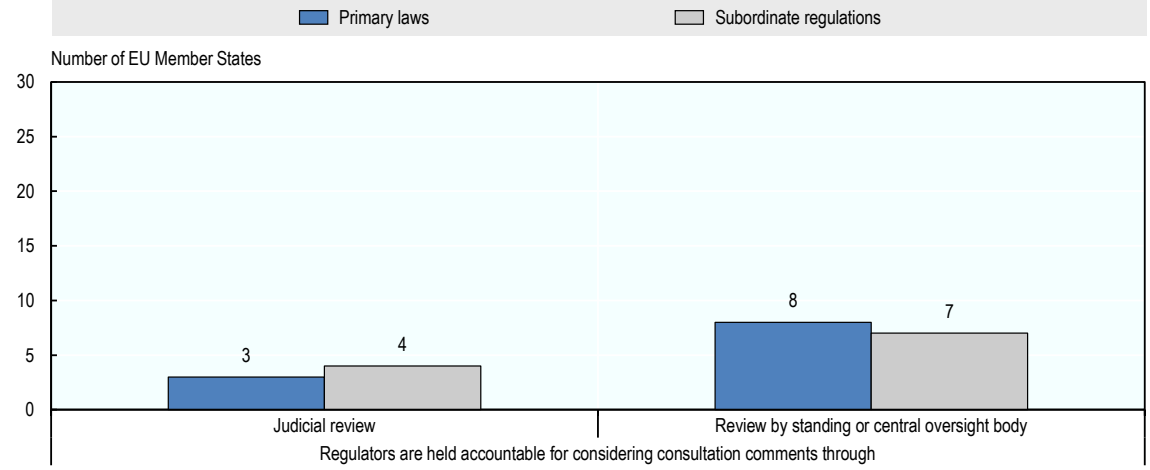
Figure 1.6. Quality control of RIA



Note: Data is based on 28 EU Member States.
Source: Indicators of Regulatory Policy and Governance Survey 2017, http://oe.cd/ireg.

Comparable to the situation across the OECD, quality control of stakeholder engagement processes is much less widespread (Figure 1.7). Less than a third of EU countries use judicial review or scrutiny by an oversight body to ensure that comments received during consultations are taken into account for finalising a regulation. Oversight bodies that are responsible for oversight of stakeholder engagement are frequently, but not in all cases, the same bodies that are responsible for RIA quality control. On the European level, the European Commission's Regulatory Scrutiny Board, which scrutinises the quality of RIAs, also scrutinises the quality of stakeholder engagement processes.

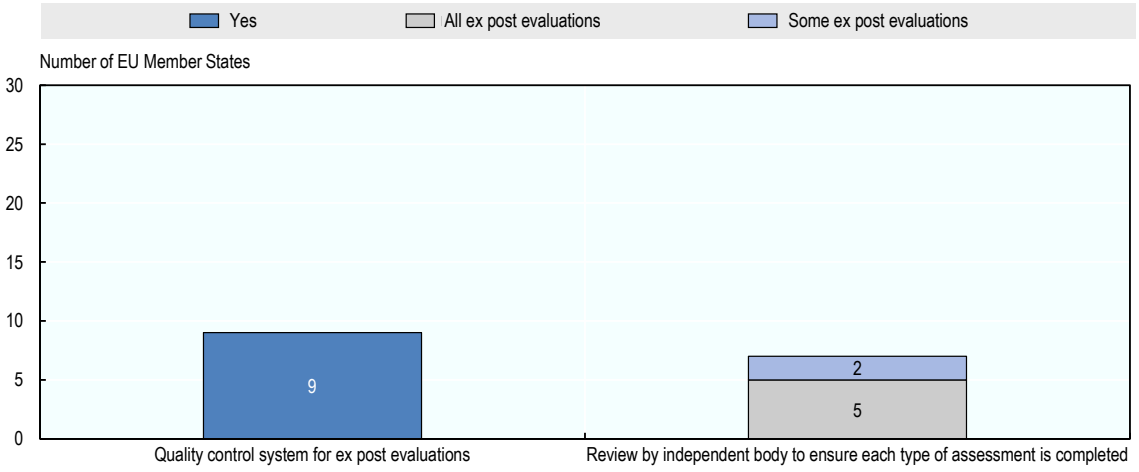
Figure 1.7. Quality control of stakeholder engagement processes



Note: Data is based on 28 EU Member States.
Source: Indicators of Regulatory Policy and Governance Survey 2017, http://oe.cd/ireg.

Systematic quality control of *ex post* evaluations is rare among EU countries, just as it is rare among the OECD membership (Figure 1.8). Nine EU countries report to have a quality control system for *ex post* evaluations. Quality control is usually carried out by a body reviewing the evaluations. In almost all cases, this responsibility is assigned to the same body that is in charge of RIA quality control. At the European Commission, the Regulatory Scrutiny Board scrutinises selected *ex post* evaluations.

Figure 1.8. Quality control of *ex post* evaluations



Note: Data is based on 28 EU Member States.
Source: Indicators of Regulatory Policy and Governance Survey 2017, http://oe.cd/ireg.

Evaluation of regulatory management tools

Evaluating the performance of regulatory management tools is crucial to understand if existing regulatory policy frameworks achieve their goals and to identify areas for improvement. This has been recognised in Principle 6 of the *2012 Recommendation*, which calls for countries to "regularly publish reports on the performance of regulatory policy and reform programmes [including] information on how regulatory tools such as Regulatory Impact Assessment (RIA), public consultation practices and reviews of existing regulations are functioning in practice" (OECD, 2012[5]). Building on the *Recommendation*, the OECD has developed methodological guidance for countries on how to assess the functioning of their regulatory management tools (OECD, 2014[13]).

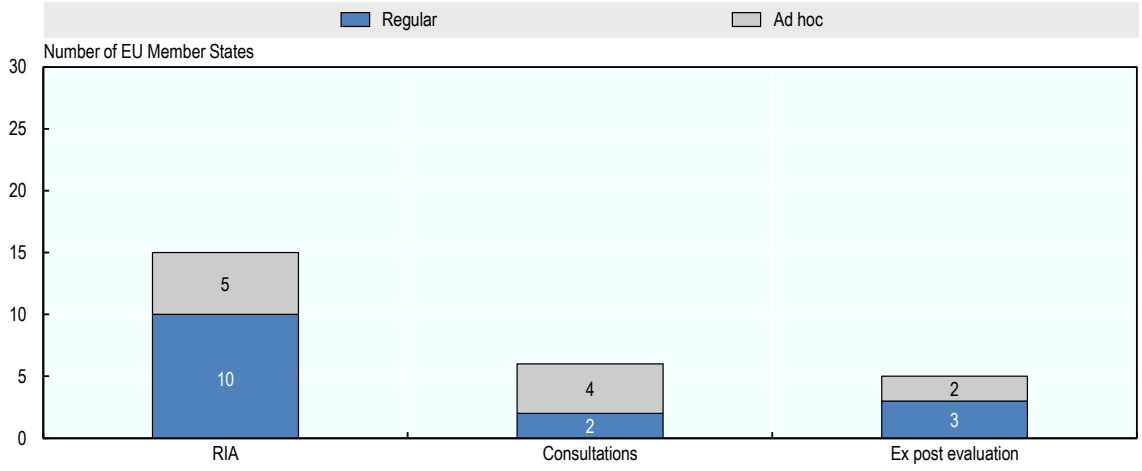
Evaluations of regulatory management tools provide a "reality check" that shows if they are implemented effectively and if they have the intended impact on regulatory quality. Evaluations of regulatory policy also help target limited resources for reform where they are most needed, and can serve as benchmark for ministries and agencies to enhance their use of regulatory management tools. Finally, performance information on regulatory policy also provides a lever to communicate progress on regulatory reform and garner political support for regulatory policy.

EU Member States currently do not evaluate their use of regulatory management tools on a systematic basis to capitalise on the important benefits of such an evaluation. Reports on the performance of regulatory management tools focus largely on RIA and are often conducted ad hoc (Figure 1.9). Half of all EU countries have published at least an ad hoc report on the performance of the RIA system and how it functions in practice in the last

ten years. Ten EU countries undertake regular evaluation efforts to gauge the performance of their RIA systems (see Chapter 3). In contrast, only a handful of EU countries have published performance reports on consultation practices or *ex post* evaluations (see Chapters 2 and 4).

The European Commission is currently undertaking a review of its better regulation agenda in the form of a public stocktaking exercise, focussing on RIA, stakeholder engagement and *ex post* evaluation. The review is expected to contribute the development of the current regulatory framework by identifying strengths and gaps in existing practices and to develop suggestions for improvement. The stocktaking exercise is forecast to conclude in 2019.

Figure 1.9. Performance reports on regulatory management tools



Note: Data is based on 28 EU Member States
Source: Indicators of Regulatory Policy and Governance Survey 2017, http://oe.cd/ireg.

Actors of regulatory oversight in EU countries

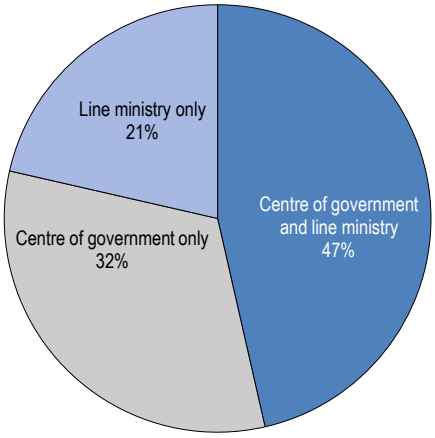
Institutional arrangements to embed regulatory oversight capacity are manifold. The *2018 Regulatory Policy Outlook* (OECD, 2018[1]) finds that the institutional setup for regulatory policy is heterogeneous across different jurisdictions. In OECD countries, responsibilities for different oversight functions are often split between several bodies. The picture for the European Union looks very similar: Most EU countries report to have more than one oversight body, and bodies split responsibilities for different oversight functions.

A majority of regulatory oversight bodies in EU countries are units or departments within the executive, i.e. at the centre of government or a line ministry. However, dedicated arm's length bodies or bodies outside the executive, such as parliamentary bodies, supreme audit institutions or bodies that are part of the judiciary also play a significant role in regulatory oversight. Again, the situation in EU Member States reflects the picture across the OECD membership.

In EU countries, capacity for regulatory oversight within the executive is most frequently located at the centre of government (Figure 1.10). More than three quarters of EU countries have assigned responsibility for regulatory oversight to one or more bodies

located at the centre of government. In about half of all EU Member States, the centre of government shares oversight responsibilities with one or several line ministries, capitalising on these ministries' specific expertise in economic or administrative matters.

Figure 1.10. Location of oversight capacity within the executive of EU countries



Note: Data is based on 28 EU Member States.
Source: Indicators of Regulatory Policy and Governance Survey 2017, http://oe.cd/ireg.

The emergence of arm's length regulatory oversight in the European Union

A new trend towards the creation of "arm's length" regulatory oversight bodies has emerged in Europe over the past twenty years. Complementary to the establishment of regulatory oversight capacity within the executive, these bodies are not subject to the direction on individual decisions by executive government, but could be supported by officials who are located within a ministry or have its own staff. To shed light on the activities, characteristics and governance arrangements of these new kinds of oversight bodies, the OECD developed case studies in co-operation with eight European arm's length regulatory oversight bodies to compare their common features and differences (OECD, 2018[14]). They include bodies in six EU Member States, Norway, as well as the European Union Regulatory Scrutiny Board (see Table 1.2).

Table 1.2. European "arm's length" regulatory oversight bodies

Country	Body	Year of establishment
Czech Republic	Regulatory Impact Assessment Board (RIAB)	2011
European Union	Regulatory Scrutiny Board (RSB)	2015 (predecessor Impact Assessment Board 2006)
Finland	Finnish Council of Regulatory Impact Analysis (FCRIA)	2015
Germany	Nationaler Normenkontrollrat (NKR)	2006
Netherlands	Adviescollege Toetsing Regeldruk (ATR)	2017 (predecessor Actal 2000)
Norway	Norwegian Better Regulation Council (NBRC)	2015
Sweden	Swedish Better Regulation Council (SBRC)	2008
United Kingdom	Regulatory Policy Committee (RPC)	2009

Source: OECD (2018), Case studies of RegWatchEurope regulatory oversight bodies and of the European Regulatory Scrutiny Board, OECD Publishing, Paris.

European arm's length bodies differ in their institutional setup and capacities, but share a range of governance features that differentiate them from more "traditional" actors of regulatory oversight like units at the centre of government or in line ministries. Their institutional setup and resources provide safeguards from outside interference in their regulatory oversight activities. At the same time, these bodies remain connected and accountable to their sponsoring government institutions, as for example their board members are appointed by government or their secretariats are embedded in their sponsoring institution.

In line with their mandate, European arm's length bodies are all responsible for the quality control of regulatory management tools, although the scope and focus of their RIA scrutiny varies. For example, some of the bodies only scrutinise RIAs for selected proposals, often due to resource constraints, and some bodies focus on examining impacts on business or the costs of regulation only.

As is the case for most regulatory oversight bodies in the European Union, most of the eight arm's length bodies have advisory powers for the scrutiny of RIA quality and cannot return RIAs for revision if they consider their quality as insufficient. The exceptions are the European Commission's RSB and the United Kingdom's RPC. If these bodies issue a negative opinion on a RIA, it must be revised and resubmitted.

The emergence of arm's length regulatory oversight bodies in Europe reflects the institutional dynamism in the area of regulatory oversight on an international level. Across the OECD, many countries have established oversight bodies with less traditional features, such as arm's length bodies, or mixed bodies involving representatives from the government, the legislative branch and/or civil society (academia, business, or other). While the case studies on European arm's length bodies provides highly relevant insights into the functioning of these bodies, further analytical work on the characteristics of these and other oversight bodies may be helpful to better understand their modus operandi and relationship with government, parliament and civil society.

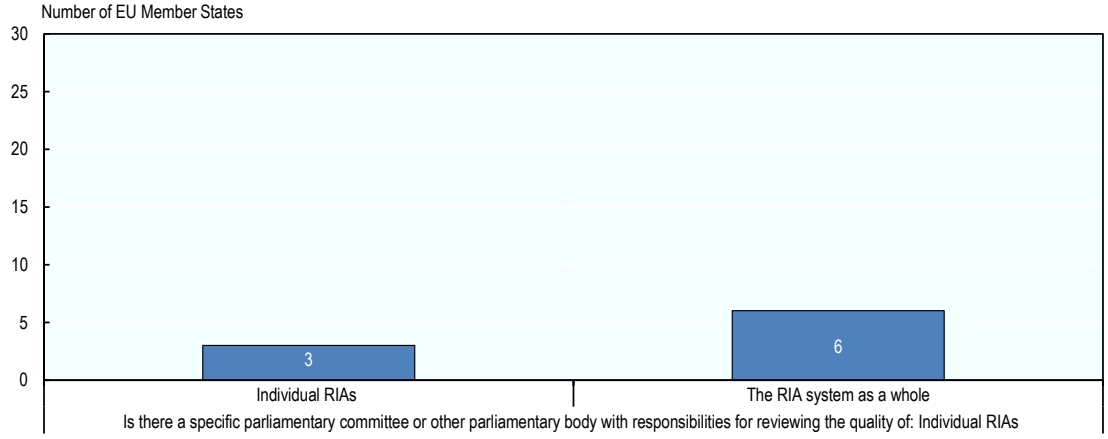
The role of parliaments in regulatory oversight

Parliaments have a crucial role to play in regulatory policy and oversight (OECD, 2015[10]). As the ultimate authority to approve legislation, they are predisposed to carry out oversight of the application of better regulation principles for new and amended laws. Parliaments are also one of the main initiators of legislation, and can amend legislative proposals brought forward by the executive. On average, about 16% of national laws adopted in the period between 2014 and 2016 have been initiated by parliament across the EU membership. In part due to variations in political systems, the share of laws initiated by parliament varies significantly across EU Member States: While almost 60% of laws are initiated by parliament in Bulgaria, and around 40% in the Czech Republic and Poland, no laws initiated by parliament have been adopted between 2014 and 2016 in Greece and Sweden (see Annex A).

Contrary to its eminent place in the legislative process, parliaments are not very involved in regulatory oversight across the EU (Figure 1.11). This is in line with findings for the OECD membership. Only very few EU countries report to have a parliamentary body responsible for scrutinising the quality of individual RIAs. These parliamentary committees usually verify the existence of RIAs accompanying legislative proposals and use the information contained in RIAs in their deliberations. Six EU countries report to have a parliamentary body that is responsible for reviewing the overall RIA framework. For example, the French "Comité d'évaluation et de contrôle des politiques publiques"

published a report examining different tools used within the French government to evaluate public policies, including the status quo of the use of RIAs (Comité d'évaluation et de contrôle des politiques publiques (CEC), 2018[15]). Parliaments in a number of EU countries also engage in *ex post* evaluation efforts to ensure legislation remains fit for purpose (see e.g. (OECD, 2012[16]) and Chapter 4).

Figure 1.11. Parliamentary oversight of RIA



Note: Data is based on 28 EU Member States.
Source: Indicators of Regulatory Policy and Governance Survey 2017, http://oe.cd/ireg.

The European Parliament carries out quality control of European Commission impact assessments and conducts *ex post* evaluation of existing regulation (European Parliamentary Research Service (EPRS), 2018[17]). The European Parliamentary Research Service's Directorate for Impact Assessment and European Added Value prepares initial appraisals of all impact assessments prepared by the European Commission for consideration by parliamentary committees, and provides other services such as complementary impact assessments or impact assessments on parliamentary amendments to legislative proposals. The Directorate also provides appraisals of the implementation of existing EU legislation for all proposals that update the existing legal framework. In addition, parliamentary committees may request more detailed implementation assessments of specific existing EU laws or policies or other analyses on implementation issues.

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Chapter 2. Stakeholder engagement across the European Union

Engaging with those concerned and affected by regulations is fundamental to improve the quality of regulations, to strengthen public trust in government and to enhance compliance with regulations. This chapter discusses the stakeholder engagement practices in each EU Member State and the European Union based on the results of the 2018 Indicators of Regulatory Policy and Governance. It assesses the use of stakeholder engagement in all EU Member States at various stages of policy development, on their own regulatory proposals as well as those of the European Commission. The chapter also addresses the communication tools currently used by EU countries when engaging with stakeholders and whether stakeholders receive feedback on how their comments were taken into account.

Note by Turkey:
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. Turkey recognises the Turkish Republic of Northern Cyprus (TRNC). Until a lasting and equitable solution is found within the context of the United Nations, Turkey 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 Turkey. The information in this document relates to the area under the effective control of the Government of the Republic of Cyprus.

Introduction

The central objective of regulatory policy is to ensure that regulations are of net benefit to society. A critical aspect of this objective is to communicate with those interested in and affected by regulations – the "stakeholders". A process of communication, consultation and engagement which allows for public participation of stakeholders in the regulation-making process as well as in the revision of regulations can help governments understand citizens' and other stakeholders' needs and improve trust in government (OECD, 2012[1]).

It is recognised that engaging with those concerned and affected by regulation is of fundamental importance to improve the design of regulations (and thereby decrease regulatory burdens on business, as well as decrease regulatory costs to government), enhance compliance with regulations and increase public trust in government. Amid contemporary challenges of representative democracies, such as the increased distrust of political parties and civic disaffection (Altman, 2013[2]; Dalton and Weldon, 2005[3]; Dogan, 2005[4]), OECD countries collectively only relatively recently acknowledged the importance of "pay[ing] more attention to the voice of users, who need to be part of the regulatory development process" (OECD, 2011[5]). As was noted in Chapter 1, the European Commission adopted general principles and minimum standards in 2002.

By engaging with stakeholders – who can contribute their own experiences, expertise, perspectives and ideas to the consideration of the regulation in progress – governments gain valuable information on which to base their policy decisions. Information from stakeholders can help to avert unintended effects and practical implementation problems of regulations. Tapping into the knowledge of stakeholders is also useful in connection with regulatory impact assessments to collect and check empirical information for analytical purposes; identify policy alternatives including non-regulatory options; and measure stakeholders' expectations. Furthermore, stakeholders can provide a quality check on the regulators' assessment of costs and benefits.

Meaningful stakeholder engagement in the development of regulations is expected to lead to higher compliance and acceptance of regulations, in particular when stakeholders feel that their views were considered, they received an explanation of what happened with their comments, and they feel treated with respect (Lind and Arndt, 2016[6]). Perfunctory 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. Furthermore, governments can incur additional costs to achieve compliance and effectively enforce regulations, thereby imposing unnecessary burdens on compliant businesses. At the same time, perfunctory consultation increases risks of both regulatory and market failures, potentially putting citizens' lives at risk.

The OECD has formally recognised such risks, and the *OECD 2012 Recommendation* provides that member countries should "Adhere to principles of open government, including transparency and participation in the regulatory process to ensure that regulation serves the public interest and is informed by the legitimate needs of those interested in and affected by regulation. This includes providing meaningful opportunities (including online) for the public to contribute to the process of preparing draft regulatory proposals and to the quality of the supporting analysis. Governments should ensure that regulations are comprehensible and clear and that parties can easily understand their rights and obligations" (OECD, 2012[1]).

This chapter analyses EU Member States' stakeholder engagement requirements and practices as reported in the iREG survey and its extension to all EU Member States. The construction of the surveys was explained in the reader's guide and is covered in Annex B. The section below presents the key findings of the iREG survey as they relate to the European Union and other OECD member countries where appropriate. The second section presents an overview of the results based on the survey. The third section provides the central stakeholder engagement requirements across the EU. The section on stakeholder engagement in the different stages of the rule-making process discusses stakeholder engagement requirements and their implementation to the various stages of policy development across EU Member States. The section on communication tools addresses the tools currently utilised by Member States when engaging with stakeholders. The section on stakeholder engagement during the development and transposition of EU legislation discusses EU Member States' consultation requirements on EU-made laws. The section on effectiveness of stakeholder engagement discusses the importance of evaluating consultation practices and provides some examples where Member States have undertaken reviews.

Key findings

Although all EU Member States have invested in consulting with stakeholders on regulatory proposals, there are substantive differences across countries in both their requirements and practices. All Member States have consultation requirements in place, and they generally provide the opportunity for input from the broader public. Consultation requirements tend to be less stringent for subordinate regulations than they are for primary laws. Similarly, the European Commission has invested significantly into improving its dialogue with stakeholders in recent years. In particular, it has a structured approach to inform the public on upcoming consultation activities and engage with affected members of the public throughout the policy development process (see section Stakeholder engagement during the development and transposition of EU legislation).

In order to maximise the value of stakeholder engagement it is important that policy makers are engaged at both the early stage and the late stage of the policy making process. Consultation requirements at an early stage of policy development – where a regulatory problem has been identified and feasible options are being considered – are far less developed than they are once a decision has been made to regulate, and a preferred regulatory option has been identified. This denies stakeholders the opportunity to provide input into the regulatory process at a stage where other options could be put forward by affected parties and assessed by policy makers. In turn, this may leave stakeholders feeling that their inputs are not valued, negatively affecting trust in the decisions made, and potentially causing additional costs to government at a later stage through additional compliance and enforcement outlays.

In the case of each developed regulation regardless of whether any other forms of engagement have taken place before, a notice and comment (or similar) procedure has to take place. Stakeholders should know that there are certain procedures which every regulatory project has to go through, where all stakeholders have an opportunity to get involved. Substantive investments have been undertaken by EU Member States to seek input on draft laws from affected parties, especially via electronic communication means. The general trend is that Member States have more complete requirements later in the policy development process.

Member States do not generally use annual plans, roadmaps or similar tools to inform stakeholders well in advance of possible future requests for their input in forthcoming consultations on regulatory proposals. This denies stakeholders the benefit of being able to better consider whether they can provide meaningful feedback on upcoming consultations, and also prevents policy makers from having these insights provided to them during the nascent stage of policy development.

EU Member States have invested in a broad range of methods to help ensure that all affected parties are notified about consultations. That said, this is far more likely in relation to consultations where a regulatory decision has already been made. Member States have invested heavily in improving their online communication tools. Most Member States now have online central consultation portals in place, in addition to individual ministry websites. In some countries these websites have become quite advanced, allowing stakeholders to comment 'live' on draft laws, and also allowing for a discussion between multiple stakeholders. While these investments should be acknowledged, it is still often unclear how (or if) these comments are taken into account by policy makers. More needs to be done to transparently demonstrate how consultations have helped to improve regulatory proposals.

Similarly to OECD countries, EU Member States have not tended to assess whether their stakeholder engagement practices are in fact yielding the expected results. It is therefore unknown whether, and to what extent, stakeholders have improved the design of regulatory proposals, and in turn how that has helped to improve societal welfare.

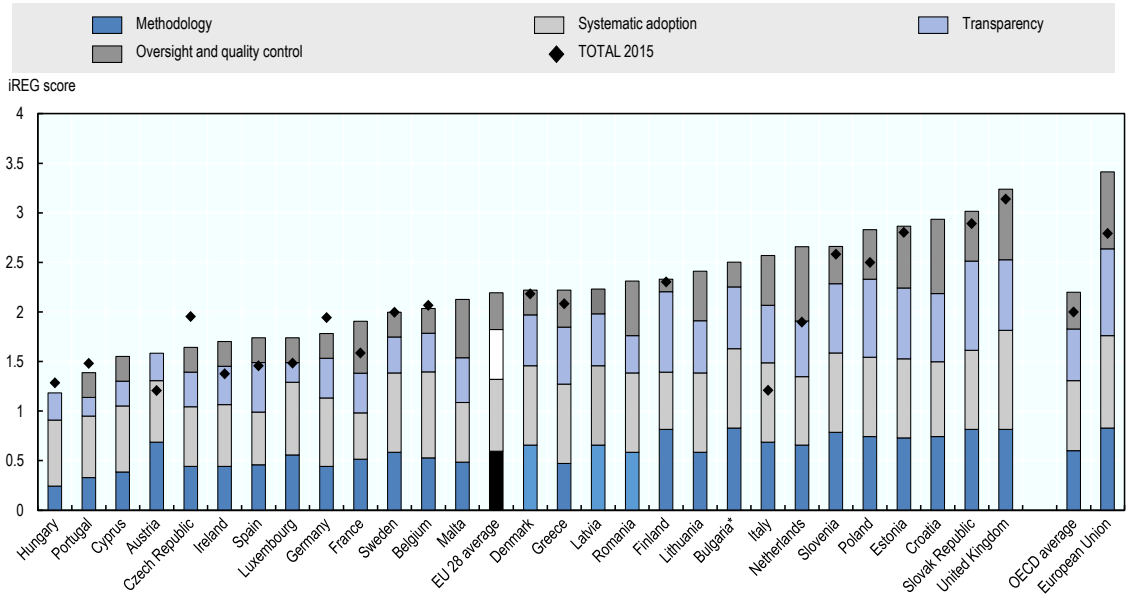
An overview of stakeholder engagement across the EU

There is a substantive amount of variation across the EU Member States' requirements and implementation of stakeholder engagement in the development of primary laws (Figure 2.1) and subordinate regulations (Figure 2.2). The reader's guide at the beginning of this report covered the construction of the composite indicators, including the disclaimers concerning conclusions that may be drawn given the inherent limitations of cross-country comparable composite indicators.

Relative to regulatory impact assessment and *ex post* evaluation however (see Chapters 3 and 4), the results for primary laws exhibit less variance. Stakeholder engagement requirements generally apply across various policy areas in EU Member States. There is at least some level of formal requirements to conduct stakeholder engagement across all EU Member States. In general, Member States exhibit more complete requirements during later stages of policy development, than they do at earlier stages. This is the case for 17 of the 28 Member States, including Croatia, Ireland, Latvia, Luxembourg, and Sweden.

EU Member States generally have stronger consultation methodologies in place once a regulatory decision to regulate has been made, compared with earlier stages of policy development. In practice, 21 out of 28 EU Member States always conduct consultation on draft primary laws; whereas only Belgium, Italy, and the United Kingdom uniformly require stakeholder engagement to be conducted so as to inform officials about the nature of the problem and to inform discussions on possible solutions. The forms of consultations such as the use of meetings and advisory groups are utilised more heavily at the later stages of policy development, compared with more nascent stages of policy development. This is especially the case for Austria, Cyprus, and Hungary.

Figure 2.1. Composite indicators: Stakeholder engagement in developing primary laws, 2018



Note: Data for 2015 is based on the 34 countries that were OECD members in 2014 and the European Union, which included 21 of the current 28 EU Member States. The OECD average is based on the 34 member countries at the time of the survey. Data for 2018 includes the remaining EU Member States of Bulgaria, Croatia, Cyprus, Malta and Romania. The more regulatory practices as advocated in the 2012 Recommendation a country has implemented, the higher its iREG score. * In the majority of EU Member States, most primary laws are initiated by the executive, except for Bulgaria, where a higher share of primary laws are initiated by the legislature.
Source: Indicators of Regulatory Policy and Governance Surveys 2014 and 2017, http://oe.cd/ireg.

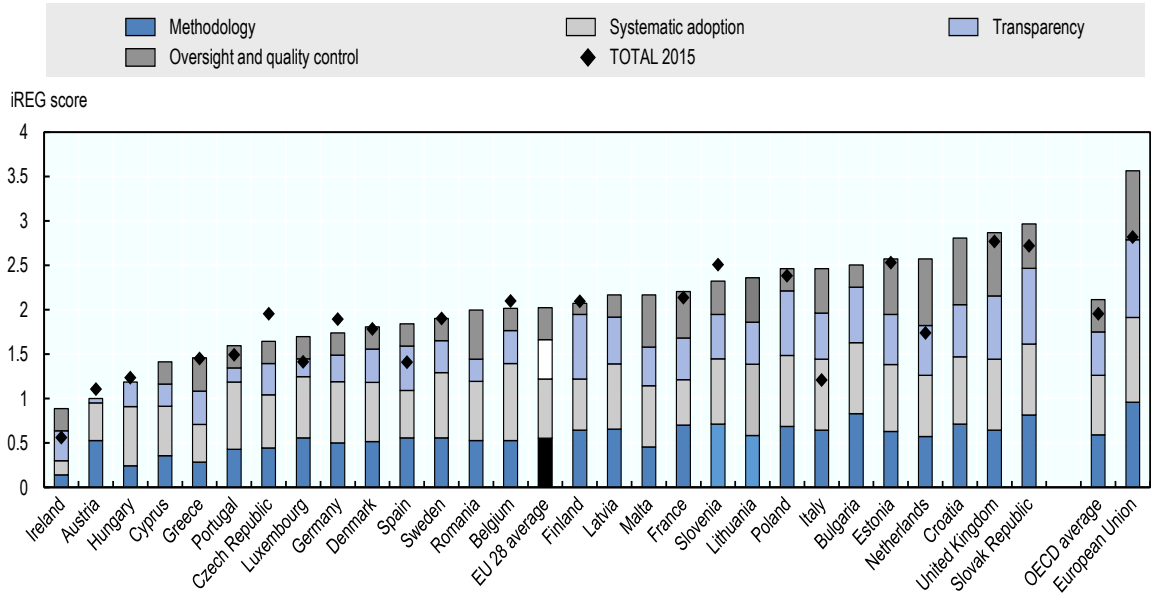
There is room to improve EU Member States' transparency of their stakeholder engagement. Only Croatia, Finland, Italy, and the Slovak Republic systematically inform members of the public in advance that a public consultation is planned to take place, for instance by publishing announcements via websites, roadmaps or annual regulatory plans. Furthermore, where consultations have been undertaken, around 60% of EU Member States formally require policy makers to consider consultation comments when developing final draft laws. Member States use a variety of approaches, with the majority of EU countries publishing individual comments received or a summary of the contributions on a dedicated consultation website.

Oversight and quality control is weak across EU Member States. Austria, Finland, and Hungary do not currently have any oversight for stakeholder engagement. In less than half of the Member States public evaluations of stakeholder engagement have been undertaken.

With regards to subordinate regulations, EU Member States' consultation systems are generally less developed than they are for primary laws (Figure 2.2). Only in France, Malta, Portugal, and Spain are there more stringent consultation requirements for subordinate regulations than for primary laws; whilst Bulgaria, the Czech Republic, and Hungary have similar consultation requirements and practices for primary and subordinate laws. Stakeholders may be informed of regulatory proposals relating to

primary laws via the general media for instance, but subordinate regulations are not always as highly visible. It is therefore important that stakeholders remain informed of regulatory proposals relating to subordinate regulations, especially since they often impose regulatory requirements on business. One such way to help ensure that stakeholders are informed in a sufficient manner could be via electronic means.

Figure 2.2. Composite indicators: Stakeholder engagement in developing subordinate regulations, 2018



Note: Data for 2015 is based on the 34 countries that were OECD members in 2014 and the European Union, which included 21 of the current 28 EU Member States. The OECD average is based on the 34 member countries at the time of the survey. Data for 2018 includes the remaining EU Member States of Bulgaria, Croatia, Cyprus, Malta and Romania. The more regulatory practices as advocated in the 2012 Recommendation a country has implemented, the higher its iREG score.
Source: Indicators of Regulatory Policy and Governance Surveys 2014 and 2017, http://oe.cd/ireg.

Across the EU Member States — and in parallel with primary laws — countries generally have formal requirements in place for engaging with stakeholders in the development of subordinate regulations. However, also similarly to primary laws, EU Member States tend to engage with stakeholders at a later stage of regulatory development, i.e. when a preferred regulatory option has been identified. That said, it should be noted that both Belgium and Italy require stakeholder engagement at an early stage of policy development for major subordinate regulations.

Following a similar trend, EU Member States overall have tended to develop more complete consultation methodologies at a later stage of policy development. This includes things such as minimum consultation periods, as well as facilitating feedback from the general public. Relatively stronger requirements at an early stage of policy development, coupled with public consultations at a later stage, are observed in Bulgaria, Croatia, Lithuania, Malta, Romania, the Slovak Republic, and the United Kingdom. It should also be noted that the European Commission's requirements at this stage are similarly robust.

There is substantive scope to improve the transparency of stakeholder engagement in the development of subordinate regulations across EU Member States. Only Bulgaria, Croatia, the Slovak Republic, and the United Kingdom have requirements in place to consider and respond to stakeholder comments through an open and public process. The European Union has a similarly transparent system. Although all EU Member States (apart from Romania) have a public, up to date and complete online searchable database of current laws, the transparency of proposed laws is currently at a more much more nascent stage of development.

The oversight of EU Member States' stakeholder engagement practices is weak overall. Only Croatia, the Netherlands, and the United Kingdom have formal oversight requirements in place where policy makers are held to account for the quality of their stakeholder engagement via third parties such as the judiciary and/or various review or standing bodies—as well as providing more comprehensive compliance statistics on consultations in practice. The European Commission's system has similar features.

General stakeholder engagement requirements across the EU

Stakeholder engagement helps governments to collect more and better information, increase compliance, and reduce uninformed opposition. Affected stakeholders include citizens, businesses, consumers, and employees (including their representative organisations and associations), the public sector, non-governmental organisations, international trading partners and other stakeholders. It is also important to remember that not all affected stakeholders have equal access and resources to devote to engaging with regulatory decision makers. In particular, stakeholders such as small businesses, and those experiencing various forms of social disadvantage often find it difficult to have their views heard. A proportionate and focussed approach to stakeholder engagement allows for better targeting of affected entities to be informed about upcoming consultations, who then, based on their individual circumstances, can determine whether to engage with the ministry responsible.

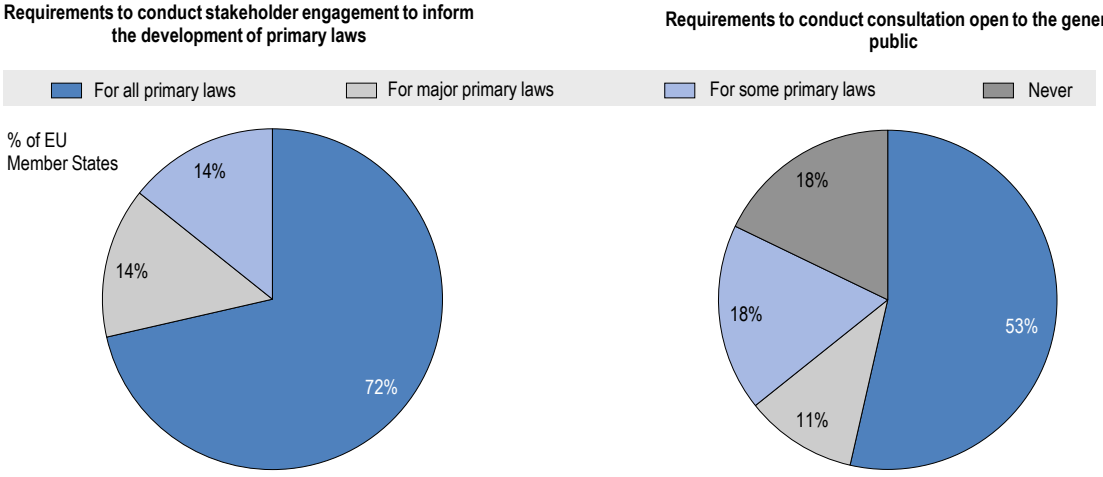
The European Union has long recognised the importance of consulting with affected stakeholders (see Chapter 1). The development of the EU better regulation agenda has resulted in an increased focus on ensuring that affected stakeholders are consulted with. Previous research by the OECD almost a decade ago found that consultation processes had improved across 15 EU Member States, which was a result of e-government investments and part of the better regulation agenda more broadly (OECD, 2009[7]). Some of these consultation systems have subsequently been reviewed (see section Effectiveness of stakeholder engagement), and have resulted in recent changes such as to the accessibility of information and engaging with stakeholders early in the policy development process.

General requirements for stakeholder engagement

A key element of the *2012 OECD Recommendation* is that governments should establish a clear policy identifying how open and balanced public consultation on the development of rules will take place (OECD, 2012[1]). Such a policy does not have to be a standalone document on regulatory policy; it can be part of a more general policy on open government. To make such a policy work in practice, however, it should include a combination of mandatory factors and basic principles for stakeholder engagement, complemented by guidance on what kinds of tools are available and suitable for particular regulatory proposals.

All EU Member States have implemented requirements to conduct stakeholder engagement on both primary laws (Figure 2.3) and subordinate regulations (Figure 2.4). The survey results indicate that 20 EU Member States have a requirement to conduct stakeholder engagement to inform the development of all primary laws (Figure 2.3, left pane). While this indicates a strong commitment to consult, it also matters who is consulted with. Here, it is illustrated that consultation with the general public is always required in only around half of the EU Member States (Figure 2.3, right pane). This demonstrates that the commitment to conduct public consultation is not quite as strong as it is when involving selected stakeholders in developing primary laws. Austria, the Czech Republic, Finland, Germany and Ireland do not require conducting consultation with the general public for any primary laws. In all of these countries, however, public consultation takes place in practice to varying degrees.

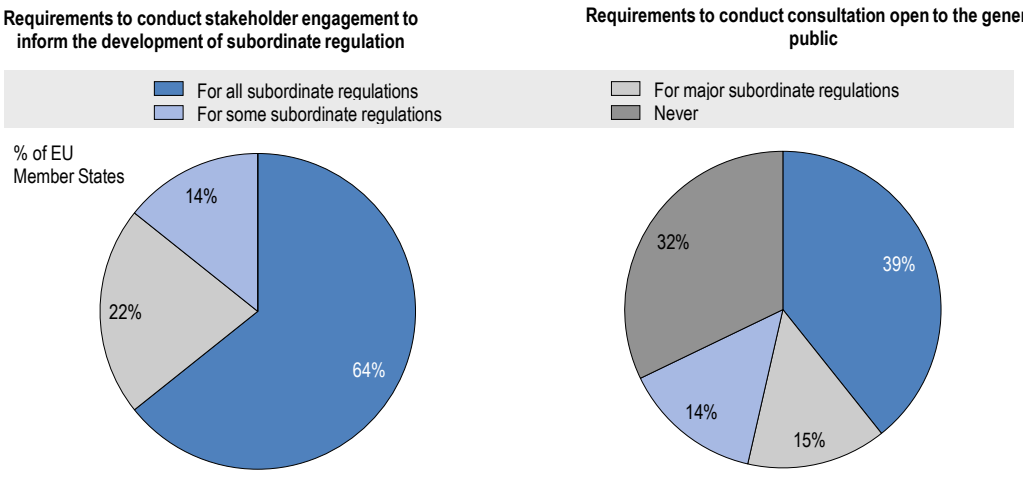
Figure 2.3. Requirements to conduct stakeholder engagement for primary laws



Note: Data is based on 28 EU Member States.
Source: Indicators of Regulatory Policy and Governance Survey 2017, http://oe.cd/ireg.

Similar to the development of primary laws, most EU Member States have a requirement in place to systematically involve stakeholders when developing subordinate regulations (Figure 2.4 left pane). It is interesting to note that more EU Member States seem to apply a proportionate approach towards stakeholder engagement compared to primary laws, focussing more frequently on those subordinate regulations with significant impacts. The survey results confirm that requirements to ensure that consultations are accessible to the general public are less widespread for subordinate regulations. Nearly 40% of EU Member States always require consultations on subordinate regulations to be conducted with the general public (Figure 2.4 right pane). This might relate to the fact that subordinate regulations can be more narrowly focused and of a more technical nature and therefore might require more specific feedback from stakeholders with a certain level of expertise in some cases. However, when deciding who to consult with when developing subordinate regulations, governments should also consider that the development of regulations are usually not subject to parliamentary oversight and hence to less public scrutiny than the processes for primary laws.

Figure 2.4. Requirements to conduct stakeholder engagement for subordinate regulations



Note: Data is based on 28 EU Member States.
Source: Indicators of Regulatory Policy and Governance Survey 2017, http://oe.cd/ireg.

Around three quarters of EU Member States have guidance documents to assist regulators undertake stakeholder engagement during the development of regulations. EU countries usually have instructions available with regards to both primary laws and subordinate regulations. Spain is the sole EU country that currently provides policy makers with bespoke guidance applying to subordinate regulations and not to primary laws. Greece, Hungary, Lithuania, Luxembourg, the Netherlands and Portugal do not have any guidance documents for stakeholder engagement available, neither for primary laws nor for subordinate regulation. The fact that a number of EU countries do not have guidance documents available, however, raises concerns surrounding the robustness of consultation procedures. Regulators may need to be provided with direction on the forms of stakeholder engagement that are appropriate at different phases of the policy development process, and which are suitable for particular types of stakeholders. Providing such guidance might not only improve compliance, it might also help to avoid frustration and overburdening of both regulators and consulted stakeholders. Additionally, individual ministries may have historically consulted with narrow sections of the affected community and not considered to engage with the broader community. Without guidance, this practice may not be quick to change. This potentially means that policy makers do not avail themselves of pertinent information which may help to assess impacts and foresee risks that may not otherwise have been apparent.

The European Commission revised and strengthened its guidelines for stakeholder engagement with its 2015 Better Regulation Package. In accordance with the revised Better Regulation Guidelines, stakeholder engagement and public consultation are required for legislative initiatives and major subordinate regulations at multiple stages throughout the development of regulatory proposals (see Box 2.3).

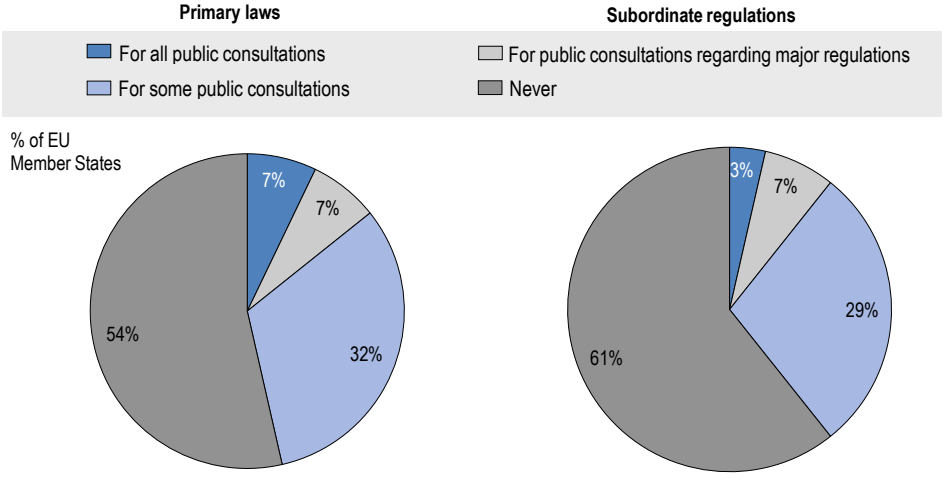
Advanced notice and minimum consultation periods

To ensure that stakeholders are effectively involved, policy makers need to engage with stakeholders sufficiently early in the regulation making process. Clear timelines for stakeholder engagement activities can help to ensure that stakeholders have sufficient

ability to submit their views (OECD, 2012[1]). EU Member States generally have provisions in place to set a minimum period for consultation with stakeholders. However, most Member States do not publish an annual regulatory plan, maintain a running list of possible future opportunities to provide input, or publish other early warning documents that could systematically inform the public in advance of planned consultation activities.

The survey results reveal that only a minority of EU Member States communicate planned consultations in advance to the public (Figure 2.5). Only Croatia, Finland, Italy and the Slovak Republic as well as the European Commission reported that they systematically inform the public before a consultation is initiated across policy areas. The European Commission for example indicates planned public consultations in roadmaps and inception impact assessments. These documents present an initial outline of ideas for planned regulations as well as plans for *ex post* evaluations and 'fitness checks'. The Commission publishes roadmaps and inception impact assessments online for feedback at an early stage of the development of a proposal for four weeks. Interested parties can subscribe to a notification system, providing information on newly-published roadmaps. Moreover, the public can track upcoming opportunities to provide input for each initiative through a timeline indicated on the Commission's consultation website (see Box 2.3). In other EU countries where consultations are announced in advance, it tends to be on an *ad hoc* basis and only in selected policy areas. For some stakeholders, it might therefore be difficult to get involved in public consultations, especially for more detailed or complex regulatory proposals where it takes time to gather information.

Figure 2.5. Members of the public are systematically informed in advance that a public consultation is planned to take place



Note: Data is based on 28 EU Member States.
Source: Indicators of Regulatory Policy and Governance Survey 2017, http://oe.cd/ireg.

Once consultations on regulatory proposals have commenced, governments should make sure that those who are usually least represented in the rule-making process are able to provide their views. For example, where affected entities' views are not adequately represented through other means such as various associations etc., additional outreach may be required. Simply publishing information on the internet without reaching out to stakeholders is not always sufficient to ensure equal access to public consultations for affected parties.

Stakeholder engagement programmes generally should be flexible enough to be applied in different circumstances, and cope with different information needs. A framework of minimum standards must nevertheless provide consistency of stakeholder activities across government and ensure that there is always the opportunity for every stakeholder to express their opinions and provide inputs. For instance, NGOs, business associations or trade unions might have to co-ordinate a common position with their members or collect various types of information before participating in a consultation, which makes the process time consuming. A regulatory policy should also provide for regulators to extend the consultation process before it starts based on justified requests of stakeholders, if circumstances permit. A majority of EU Member States have provisions in place to ensure a minimum period of consultation. They range from 7 working days in Lithuania, and 10 days in Hungary and Romania, up to 12 weeks for certain procedures in Sweden. The European Commission also conducts a 12 week public consultation for most major policy proposals. The majority of those Member States with formal requirements in place provide for a mandatory minimum period of between 4 to 5 weeks (Table 2.1).

Table 2.1. Minimum periods for consultations in EU Member States

	No minimum period	1-3 weeks	4-5 weeks	6 weeks	12 weeks
Primary laws	Czech Republic; Denmark; France; Germany; Ireland, Malta; United Kingdom	Hungary; Latvia; Lithuania; Poland; Romania; Spain	Belgium; Bulgaria; Croatia; Cyprus; Estonia; Greece; Italy; Luxemburg; Netherlands; Portugal; Slovak Republic; Slovenia;	Austria; Finland	Sweden
Subordinate regulations	Czech Republic; Denmark; Germany; Greece; Ireland, Malta; United Kingdom	Hungary; Latvia; Lithuania; Poland; Romania, Spain; France	Belgium; Bulgaria; Croatia; Cyprus; Estonia; Italy; Luxemburg; Netherlands; Portugal; Slovak Republic, Slovenia;	Austria; Finland	Sweden

Note: Data is based on 28 EU Member States.
Source: Indicators of Regulatory Policy and Governance Survey 2017, http://oe.cd/ireg.

Some EU Member States have set flexible minimum periods depending on the stage in the policy process, the type of regulatory proposals, or the stakeholders consulted with. In Lithuania for instance, the minimum period can be extended to 12 days for complex legal drafts above 10 pages. Poland distinguishes between primary laws and subordinate regulation; whereas for the former, a minimum requirement of 21 days applies, the latter only has a minimum period of 10 days. Additionally, the minimum period on draft primary laws can be extended to 30 days when consulting with unions. In the Slovak Republic, the minimum period of 4 weeks applies to early consultation with businesses and can be shortened in the case of agreement between the regulator and the consulted parties.

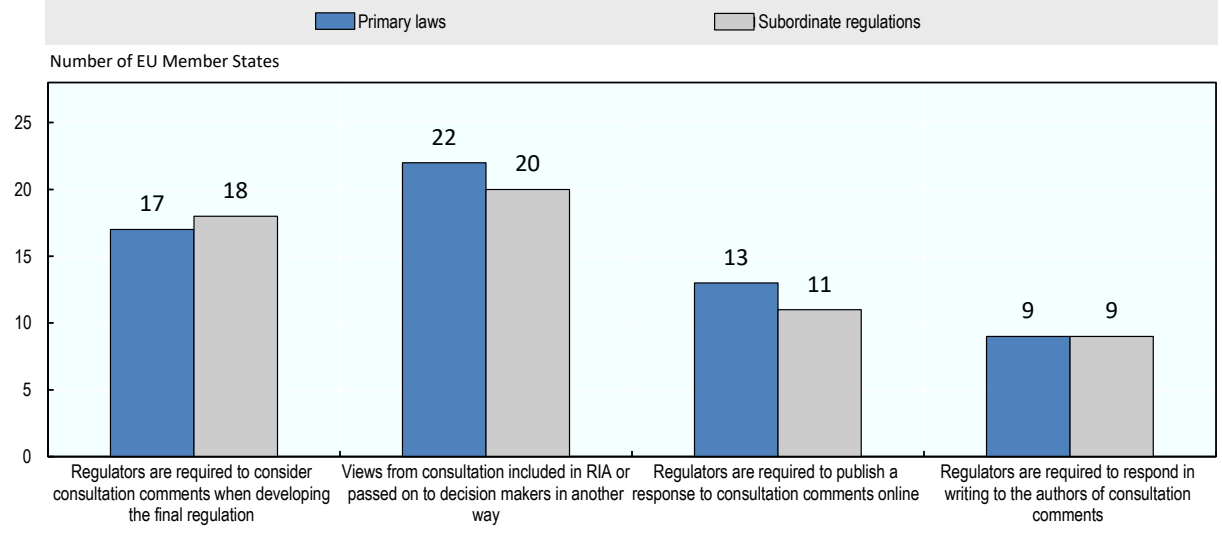
Dealing with comments received

It is necessary that administrations explain how stakeholder input has been assessed, considered and reflected in the decisions reached. Consultation strategies should be designed to prevent 'consultation fatigue' among stakeholders, which can occur where stakeholders are asked repeatedly or too frequently for their views on the same matter; or where there is no visible impact of engagement activities on the final regulatory proposal. It should be acknowledged that most EU Member States make the submissions they receive during consultations available to the public. The survey results indicate that

23 EU Member States for primary laws and 20 for subordinate regulations publish submissions made during consultations. Member States use a variety of approaches to do so, with the majority of EU countries publishing individual comments received or a summary of the contributions on a dedicated consultation website. However, not many Member States show a clear commitment to demonstrate how consultation comments have improved regulatory proposals. Perhaps more importantly, there does not appear to have been much of an improvement in this aspect over the past decade as this was identified as a substantive issue as part of OECD research into 15 EU Member States' better regulation practices (OECD, 2009[7]). Countries which do not currently make the views of the participants public neither for primary laws nor for subordinate regulation are the Czech Republic, Hungary, Portugal, Romania, and Spain.

Governments need to transparently provide information on how they made use of submissions in order to ensure an effective consultation process as well as to demonstrate the impact of comments received on final regulatory proposals to both citizens as well as decision-makers. In the majority of EU Member States, policy makers acknowledge inputs received by integrating them into regulatory impact assessments or passing them on to policy makers, e.g. by including them in explanatory memoranda (Figure 2.6). Nevertheless, it is of concern that in about a third of EU Member States, regulators are not formally obliged to actually take the results of consultation activities into account when developing regulations. Additionally, policy makers in EU countries are often not required to provide feedback to stakeholders on the comments received throughout consultations, for instance by providing individual answers to each author of consultation comments or a summary responding to the most significant comments. This raises doubts whether stakeholder engagement in EU Member States is currently delivering on its potential to improve regulatory quality, as well as civic engagement and trust in government accountability.

Figure 2.6. Obligations to consider consultation comments



Note: Data is based on 28 EU Member States.
Source: Indicators of Regulatory Policy and Governance Survey 2017, http://oe.cd/ireg.

The governments that indicated that they respond to comments received usually do so by providing a summary report on the most significant comments, as is the case in Lithuania, the Netherlands and Malta for example. The European Commission currently publishes synopsis reports, including a summary of the outcomes from consultations and an explanation about how feedback has been taken into account into the further development of proposals. A few countries also make use of interactive online tools to individually address the comments of participants in a consultation. In Croatia for instance, stakeholders are able to post comments on individual clauses of major draft regulations to its central consultation website. The responsible ministry is required to publicly address all comments received during a consultation. Similarly, the Greek central consultation portal allows members of the public and policy makers to react to comments proposed by stakeholders (see Table 2.3).

Stakeholder engagement in the different stages of the rule-making process

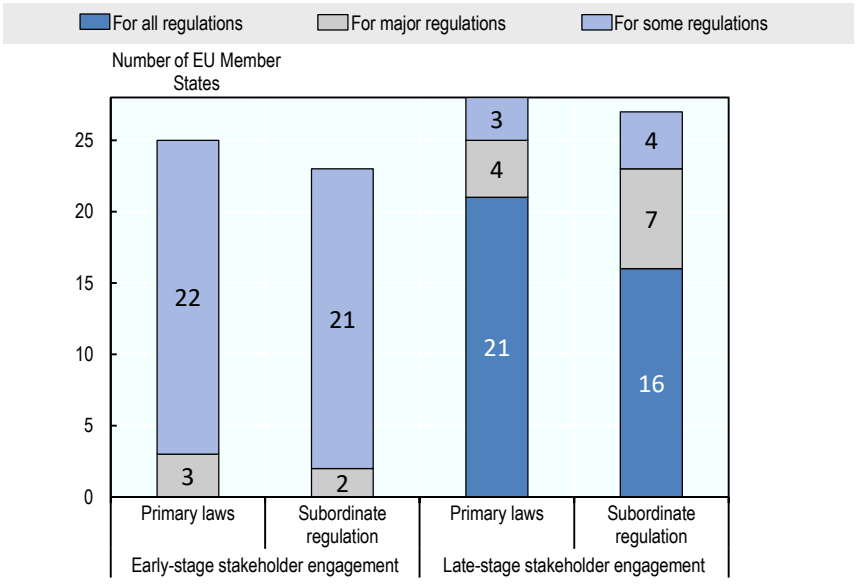
Engaging with stakeholders should start sufficiently early in the policy development process. When developing regulations, stakeholders' input should be used to assist in defining the problem and the goals for proposed regulations, particularly in cases where there is a lack of data and uncertainty. In particular, a decision to regulate should not yet have been made at this point in the policy process. This is referred to as early stage consultation. Consultation documents at this stage should explicitly identify both the underlying policy objective and the widest possible range of alternatives. It should also make clear that an objective of the process is to uncover additional policy options that may not have been apparent to policy makers.

Late stage consultation refers to the point in the regulation making process where a preferred regulatory solution has been identified and/or a draft law has been published. Consultation documents would be expected to include how initial stakeholder engagement helped to eliminate and/or increase the number of options considered. At this stage it would be expected that the impacts of alternative options had been assessed, leaving a preferred option. Consultations would then focus on the robustness of the impact assessment, as well as any potential issues surrounding the implementation of the preferred regulatory option. Engagement should also be sought on how the preferred regulatory option can be complied with, how it will be enforced, and how it will be reviewed to so as to ensure that it remains fit for purpose over time.

Stakeholder engagement at the various stages of the rule-making process

Despite the benefits of involving stakeholders as early as possible in the policy process, systematically engaging with stakeholders before a preferred regulatory option has been identified is an uncommon practice across EU Member States (Figure 2.7). EU Member States usually do not systematically conduct stakeholder engagement before the development of a regulation. Only Belgium and the United Kingdom (for primary laws) systematically seek stakeholder input on policy problems and possible solutions during the development of all regulations with expected significant impacts. Since its recent reforms, Italy is also expected to require a greater focus on early stage consultation. The European Commission currently has requirements that place a strong emphasis on stakeholder engagement throughout the policy development process, including at an early stage (see Box 2.3). Most other EU countries do so on an ad hoc basis or only for selected policy areas.

Figure 2.7. Stakeholder engagement at the different stages of the rule-making process



Note: Data is based on 28 EU Member States.
Source: Indicators of Regulatory Policy and Governance Survey 2017, http://oe.cd/ireg.

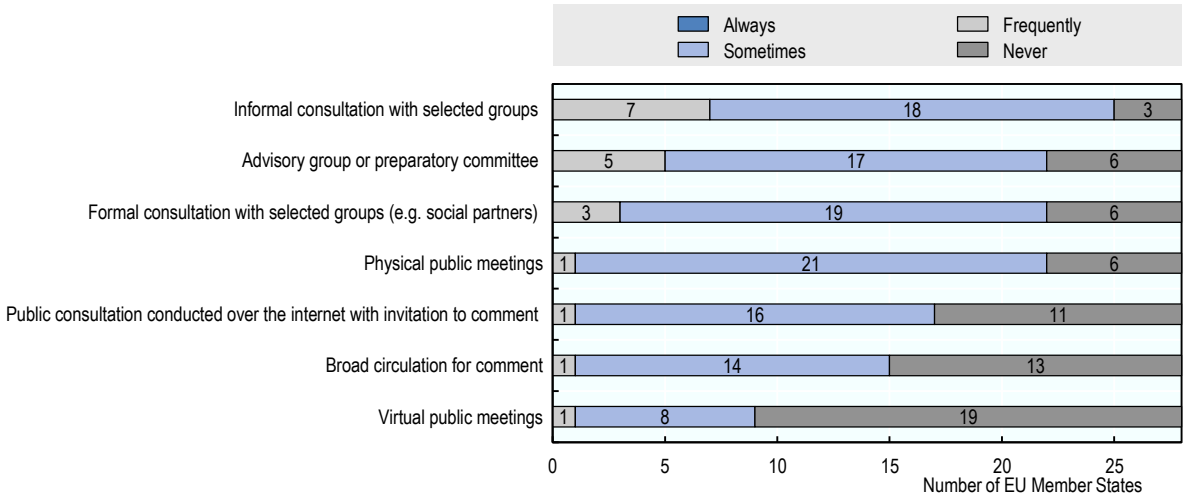
Almost all EU Member States engage with stakeholders on a systematic basis once a decision to regulate has been taken. Seeking feedback from stakeholders once a regulation has been drafted is the most common timing for stakeholder engagement among EU countries. Almost all consult on the basis of the draft of the primary laws or subordinate regulation this stage.

Forms of stakeholder engagement

A wide spectrum of consultation tools should be used to engage a broad diversity of stakeholders. Modes of consultation need to reflect the fact that different legitimate interests do not have the same access to the resources and opportunities to express their views to government, and that a diversity of channels for the communication of these views should be created and maintained (OECD, 2012[1]).

When EU Member States consult during the early stage of the rule-making process, stakeholder engagement remains mostly limited to selected policy areas and selected stakeholder or advisory groups, such as social partners or advisory committees (Figure 2.8). It is rare that EU Member States seek input on policy problems from the wider public. Results are broadly comparable to that for primary laws, with the distinction that all forms of stakeholder engagement are generally used less frequently when conducting consultation for subordinate regulations.

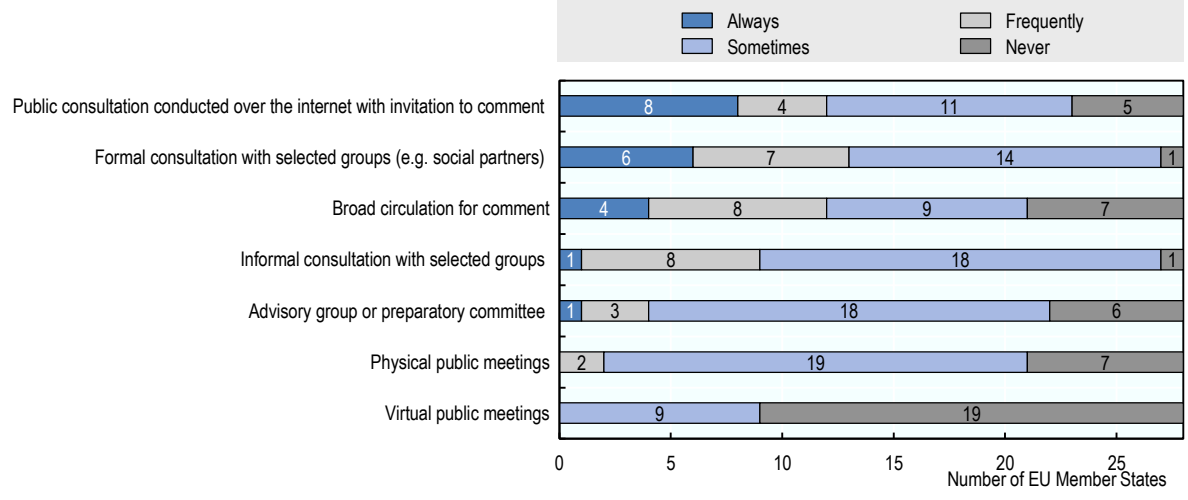
Figure 2.8. Forms of stakeholder engagement on primary laws used in the early stage of the rule-making process



Note: Data is based on 28 EU Member States.
Source: Indicators of Regulatory Policy and Governance Survey 2017, http://oe.cd/ireg.

Once a preferred solution has been identified and a regulation has been drafted, EU Member States use a wide range of forms of stakeholder engagement (Figure 2.9). Both public consultation, as well as non-public forms of stakeholder engagement including formal and informal consultation, are widely used across EU Member States – although only in a minority of cases on a systematic basis. This reflects a common trend in stakeholder engagement practices across EU Member States throughout the last decade, specifically in countries with a strong corporatist tradition: many Member States have developed forms of consultation with the wider public via ICT tools, without simultaneously abolishing more traditional forms and formal arrangements of consulting social partners and organised interest groups on draft regulations (OECD, 2009[7]).

Figure 2.9. Forms of stakeholder engagement on primary laws used in the late stage of the rule-making process



Note: Data is based on 28 EU Member States.
Source: Indicators of Regulatory Policy and Governance Survey 2017, http://oe.cd/ireg.

Documents used to conduct stakeholder engagement

As noted above, EU Member States have invested heavily in stakeholder engagement, and utilise a range of documents to engage with affected parties. The most common types of documents consulted on at an early stage of policy development are documents of legislative intent and consultation documents describing the problem and soliciting public input on possible solutions. The most utilised documents at a later stage are the draft text of a regulation and consultation documents describing the problem and suggested solutions.

It is important that policy makers receive stakeholder input throughout the regulatory design process. In practice this means that countries can benefit from the use of early stage regulatory impact statements where the regulatory problem is clearly identified, along with feasible regulatory and non-regulatory options. This is in addition to the more traditional regulatory impact statement which is expected to have conducted proportionate impact analysis, and may also have highlighted a preferred regulatory option.

Regulatory impact assessment is covered in detail in Chapter 3, but RIA is an important document upon which to conduct stakeholder engagement. This has been recognised by the OECD as an important aspect of both early and late stage consultation. General consultation processes should be closely linked with impact assessment processes for the development of new regulations through for example roadmaps, and giving early notice of possible regulatory initiatives and related consultation. The results of the consultations, together with individual contributions, should as far as possible, be made publicly available (including online where appropriate) in order to ensure a high level of transparency and reduce the risks of regulatory capture (OECD, 2012[1]).

Most EU Member States do not systematically link consultation and impact assessment processes at the early stage of regulatory development (Table 2.2). This represents a missed opportunity to seek input from stakeholders to assess the magnitude of the regulatory problem as well as consider various options — including ones not considered by policy makers. Generally, RIA is systematically used as a consultation document together with the draft regulations, which is obviously after a preferred solution has already been identified, and thereby potentially leaving little opportunity for stakeholders to effectively engage with the proposed regulation.

In 2015 the European Commission introduced consultations during the early stages of policy making. The Commission consults on major aspects of impact assessments and evaluations, and allows stakeholders to comment on draft legislative proposals and the accompanying final impact assessments after the approval by the College of Commissioners (see Box 2.3).

Table 2.2. RIA made available for stakeholder engagement

For all regulations ■	For major regulations ◆	For some regulations ❍				
	RIA available for early-stage stakeholder engagement		RIA available for late-stage stakeholder engagement		Summary of RIA available for late-stage stakeholder engagement	
	Primary laws	Subordinate regulations	Primary laws	Subordinate regulations	Primary laws	Subordinate regulations
Austria			■	❍	❍	❍
Belgium	❍	❍	❍	❍		
Bulgaria	❍	❍	■	■	❍	❍
Croatia	❍		■		■	
Cyprus						
Czech Republic			❍	❍	❍	
Denmark			■	❍	■	❍
Estonia	❍	❍	■	❍	❍	❍
Finland			❍			
France			❍	❍		
Germany			■	■	■	■
Greece			❍	❍		
Hungary					■	■
Ireland	❍		■			
Italy						
Latvia	❍	❍	◆	◆		
Lithuania			❍	❍		
Luxembourg	❍	❍	■	■	■	■
Malta						
Netherlands			◆	◆	❍	
Poland	❍		■	■		
Portugal						
Romania			❍	❍		
Slovak Republic			■	■	■	■
Slovenia			❍		❍	❍
Spain			■	■	■	◆
Sweden			◆	◆	◆	◆
United Kingdom	◆	❍	■	■	■	■
EU 28 Total (all categories)	9	6	23	19	15	12

Note: Data is based on 28 EU Member States.
Source: Indicators of Regulatory Policy and Governance Survey 2017, http://oe.cd/ireg.

Communication tools

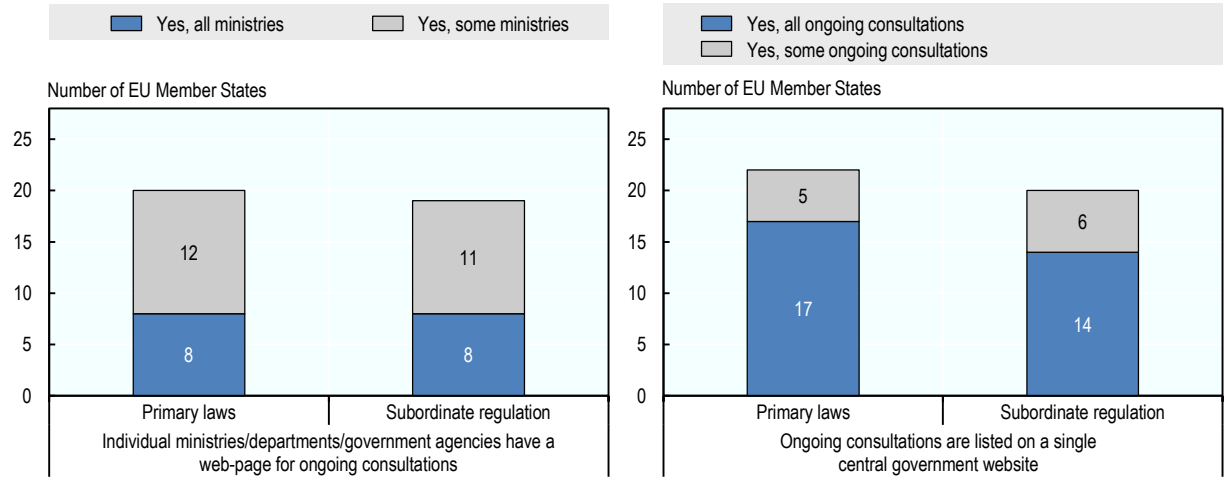
In order to maximise the quality of information received from stakeholders, governments need to choose suitable consultation tools, cognisant of the types of stakeholders and the phase of the policy process, but based firmly on a framework of minimum standards. As was discussed in Chapter 1 and noted above, EU Member States have invested heavily in communication tools so as to better engage with affected entities. OECD countries have maintained a strong affinity with traditional offline communication tools such as official government publications or "gazettes", press announcements and traditional media channels such as newspaper, radio or TV, whilst also more recently investing in online tools (OECD, 2018[8]). Enabling access to information electronically can be an efficient way to actively engage all relevant stakeholders during the regulation-making process and

as the digital gap continues to reduce over time, it is likely that online communication tools will remain an important medium for stakeholder engagement.

Online forms of communication

EU Member States have demonstrated a strong level of commitment to engaging stakeholders through electronic means. In particular, dedicated online portals to provide stakeholders with the opportunity to comment on draft regulations are notable. Survey results show that the most common means of publication are through central portals and/or ministry websites. The vast majority of EU Member States display ongoing consultations either on a central consultation website, or on websites of individual government departments or agencies (Figure 2.10). Nearly 80% of all EU Member States have a central website on which at least some ongoing consultations on primary laws are available. That said, the levels of transparency are substantively lower for subordinate regulations across Member States.

Figure 2.10. Use of consultation portals



Note: Data is based on 28 EU Member States.
Source: Indicators of Regulatory Policy and Governance Survey 2017, http://oe.cd/ireg.

EU Member States have used different approaches to integrate consultation portals into their institutional framework and regulatory processes (Table 2.3). Most EU countries have websites in place for ongoing consultations for both primary laws and subordinate regulations. Austria and Portugal only publish ongoing consultations for primary laws. Cyprus and Luxembourg are currently the only EU countries without a central consultation portal or separate websites on ministries for ongoing consultations for either primary laws or subordinate regulations.

Table 2.3. Selected consultation portals in EU Member States

EU Member State	
Austria	Since September 2017, all draft primary laws are available on the website of Parliament together with a short description of the legislative project in accessible language, the RIA and other accompanying documents. The public can submit comments on the draft regulation or support comments made by others online.
Croatia	On the interactive consultation portal *e-Savjetovanja*, major draft regulations are published for consultation for a minimum of 30 days. The website allows the public to provide general feedback on the draft or to provide comments on the individual articles of a draft regulation. The comments are publicly displayed alongside the draft, allowing other members of the public or policy makers to react. For major draft primary laws, RIA statements are also made available for comments.
Estonia	The Electronic Coordination System for Draft Legislation (EIS) tracks the development of all Estonian and EU draft legal acts, and makes available RIAs and documents of legislative intent (describing the problem to be addressed, analysing policy options and determining initial likely impacts). The website www.osale.ee/ is an interactive website of all ongoing consultations where every member of the public can submit comments on legislative proposals or other policy documents prepared by the Government and review comments made by others. EIS and www.osale.ee/ are linked, i.e. EIS takes into consideration opinions submitted via www.osale.ee/ and provides a direct link to them.
Greece	The Greek Government publishes draft laws and explanatory material on its central consultation portal to the general public. It allows the public to comment separately on individual proposed clauses in a virtual 'discussion room' where members of the public and policy makers can react and add further comments. Comments received during the consultation period are presented to the Greek Parliament, along with the draft law and other relevant materials.
Netherlands	Major draft regulations are published on the Dutch central consultation portal http://www.internetconsultatie.nl/, with the possibilities for the public to visibly publish comments on the drafts was well as a summary of the impact assessment. The use of the website has been further promoted in recent years and is more frequently used to consult also on policy documents informing about the nature of the problem and possible solutions.

Note: Data is based on 28 EU Member States.
Source: Indicators of Regulatory Policy and Governance Survey 2017, http://oe.cd/ireg; OECD Pilot database on stakeholder engagement practices in regulatory policy. http://www.oecd.org/gov/regulatory-policy/pilot-database-on-stakeholder-engagement-practices.htm

Publishing consultations on a central portal does not mean that individual ministries and agencies cannot keep their specialised portals to communicate with the relevant policy community. However, central consultation portals can be an effective way to enable access to all ongoing consultation projects in one place and to make all documents supporting the consultation process easily accessible (e.g. see Box 2.1). The European Commission for example established a new central consultation website listing all consultations and feedback opportunities (see Box 2.3). Additionally, some of the Commission's services separately provide reference to consultations in the relevant policy area on their own websites.

Box 2.1. The Slovak Republic's government consultation portal

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

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

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

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

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

Use of interactive websites

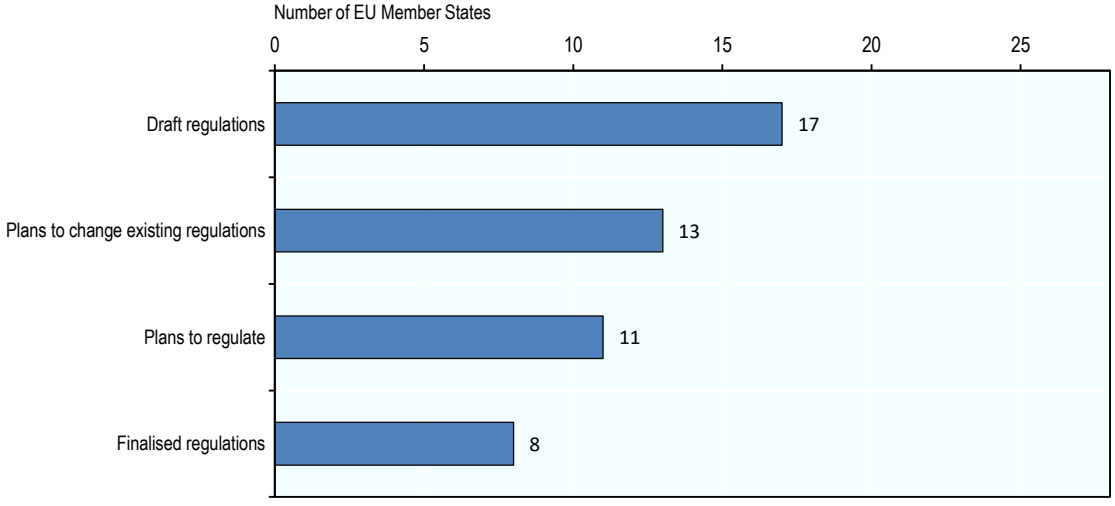
When used well, interactive websites can allow for a deeper level of engagement as they facilitate a 'conversation' between policy makers and affected stakeholders. Moreover though, they also allow for a dialogue between policy makers and multiple stakeholders, virtually simultaneously. Similar to OECD countries, EU Member States are primarily using interactive websites to consult on draft regulatory proposals, rather than engaging in a discussion with stakeholders in the early development of a proposal (OECD, 2018[8]).

Interactive websites allow for the possibility of stakeholders to refer to each other's comments; to test the veracity of new ideas; provide impact analysis; and an assessment of alternative solutions. From the policy makers' perspective, this can help to better group stakeholders' views on certain aspects of regulatory proposals. From the stakeholders' perspective, interactive websites allow for different experiences to be shared in a central place. For instance, many businesses may have struggled to comply with a particular regulation — and where one stakeholder highlights the difficulties they had, others can express similar views or highlight nuances if their experiences differed. This helps to save time and resources of policy makers and stakeholders. Regulatory proposals can, for instance, be easily grouped via online threads that make it easier for stakeholders to locate pertinent aspects which may affect them, whilst also providing valuable information to

policy makers. As a result of the use of interactive websites, policy makers may be able to better target further additional consultations with affected parties, with more detailed questions if further information is sought; or with more detailed proposals where stakeholders raised a number of queries or concerns with particular aspects of a regulatory proposal.

The majority of EU Member States go beyond merely displaying consultations of draft regulations online, and allow members of the public to discuss draft proposals on an interactive website (Figure 2.11). However, EU countries make less frequent use of interactive websites to discuss ideas, complaints or impact analyses before a regulatory decision has been made. Out of all 28 EU Member States, 13 use interactive online tools to discuss plans to change existing regulation, while 11 consult on plans to regulate. This is consistent with earlier findings (see section Stakeholder engagement in the different stages of the rule-making process) that EU Member States consult less systematically at the early stage of the policy making process. However, as discussed above, it is at that stage that interactive online tools can have particular added value to gather views and discuss ideas with stakeholders, when designed in a user-friendly way (Box 2.2).

Figure 2.11. Use of interactive websites to consult on…



Note: Data is based on 28 EU Member States
Source: Indicators of Regulatory Policy and Governance Survey 2017, http://oe.cd/ireg.

Most EU Member States that use interactive websites have developed their own tools operated by their respective government. Employing existing social media tools such as Facebook, LinkedIn or Twitter to consult stakeholders is relatively scarce among EU countries. That said, many Member States use social media to make the public aware of ongoing consultation activities or to link to their dedicated consultation websites.

Box 2.2. Finland's online stakeholder engagement platform otakantaa.fi: "Have your say"

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

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

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

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

Source: OECD Pilot database on stakeholder engagement practices in regulatory policy, www.oecd.org/gov/regulatory-policy/pilot-database-on-stakeholder-engagement-practices.htm (accessed September 2018).

Stakeholder engagement during the development and transposition of EU legislation

A number of EU Member States have requirements to systematically inform stakeholders about regulatory proposals of the European Commission at the EU level. The process of creating EU-made laws was described in detail in Chapter 1. EU Member States' requirements in relation to conducting impact assessment on EU directives and EU regulations are considered in Chapter 3.

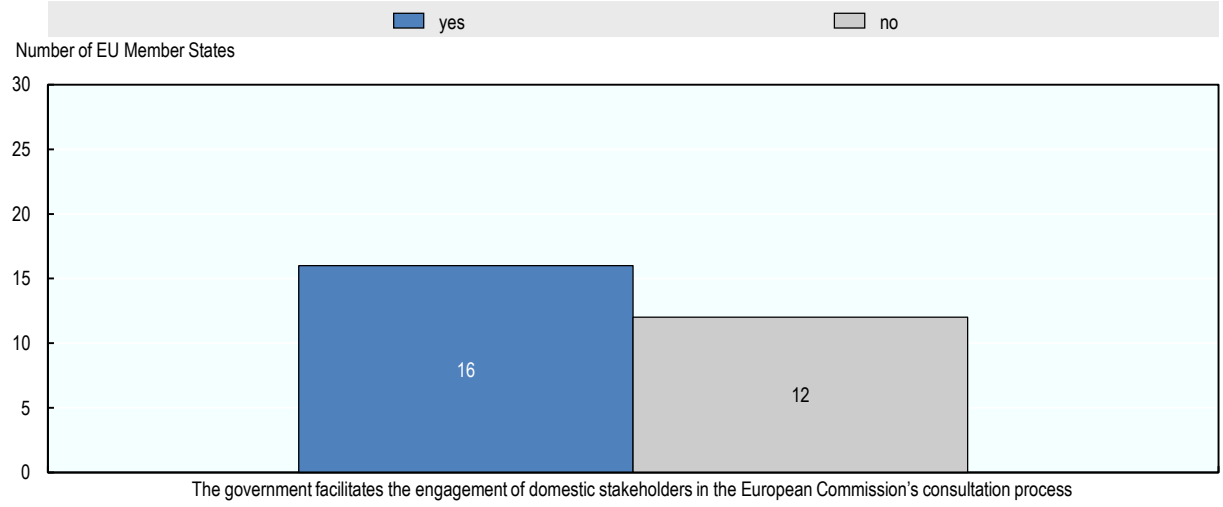
Stakeholders may be notified about EC consultations in much the same way as if the proposal originated from the Member State, such as via consultation portals. A minority of Member States require consultations with domestic stakeholders during the negotiation phase of EU draft legislative acts. By contrast, the vast majority of EU Member States have requirements in place to undertake stakeholder consultation when transposing EU directives into national laws, generally as part of the usual domestic stakeholder engagement process.

Informing stakeholders of the European Commission's consultation processes

The European Commission has a multi-stage process for ensuring that stakeholders are consulted throughout the development of regulatory proposals (Box 2.3).

Informing Member States' stakeholders of European Commission consultations is important for at least two reasons. Firstly, it allows for the EC itself to engage with affected entities, thereby offering the potential to engage on alternative options and other matters such as implementation, enforcement, and review of the laws. Secondly, from a Member State's perspective, it helps to identify particular local issues that may not be identified or otherwise considered at the EU level. Despite the Commission's processes however, only around half of EU Member States directly inform their domestic stakeholders about the Commission's consultations on draft EU directives and regulations (Figure 2.12).

Figure 2.12. Do Member State governments inform domestic stakeholders about European Commission consultation processes?



Note: Data is based on 28 EU Member States.
Source: Indicators of Regulatory Policy and Governance Survey 2017, http://oe.cd/ireg.

Both Malta and Romania for instance have specific agencies in place to inform their domestic stakeholders about the European Commission's consultation processes. The Malta-EU Steering Action Committee (MEUSAC) provides information on Malta's positions during EU decision-making process and to steer a structured consultation process. The Core Group brings together representatives of Government, the national parliament, constituted bodies, three civil society representatives and EU-related entities (Malta-EU Steering Action Committee (MEUSAC), n.d.[9]). Through the Ministry of Labor and Social Justice in Romania, the EU-Consultation platform aims to provide

information on current European Commission public consultations on a regular basis so to better involve civil society in the EU-law-making process, particularly in drafting and transposition (Ministry of Labor and Social Justice (Romania), n.d.[10]). In Italy, the Department for European Policies of the Presidency of the Council of Ministers has a dedicated website informing the general public about the online consultations of the European Commission. The website provides a general reference to the online consultation portal of the Commission as well as more specific information selected according to the policy priorities of the Government (Department for European Policies of the Presidency of the Council of Ministers (Italy), n.d.[11]).

Box 2.3. Stakeholder engagement throughout the policy cycle at the European Commission

Following the adoption of the 2015 Better Regulation Guidelines, the European Commission has extended its range of consultation methods to enable stakeholders to express their views on the entire lifecycle of a policy. It uses a range of different tools to engage with stakeholders at different points in the policy process. Timelines make it easy to track an initiative and to anticipate upcoming opportunities to provide input. Feedback and consultation input is taken into account by the Commission when further developing the legislative proposal or delegated/implementing act, and when evaluating existing regulation. At the **initial stage of policy development**, the public has the possibility to provide feedback on the Commission's policy plans through roadmaps and inception impact assessments (IIA), including data and information they may possess on all aspects of the intended initiative and impact assessment. Feedback is taken into account by the Commission services when further developing the policy proposal. The feedback period for roadmaps and IIAs is four weeks.

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

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

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

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

Stakeholder engagement at the negotiation stage

Conducting stakeholder engagement early in the policy development process is necessary to identify specific domestic issues and sensitivities to EC regulatory proposals. In turn, this may help to more appropriately account for these issues during the development of regulatory proposals at the European Union level, and thus lessen or avoid potential delays in the transposition of EU directives later in the regulatory process. Much like stakeholder engagement more generally, it is important to provide the opportunity to the community to help shape regulatory proposals. It is recognised that making decisions without stakeholder engagement may lead to confrontation, dispute, disruption, boycott, distrust and public dissatisfaction (Rowe and Frewer, 2005[12]).

The majority of individual Member States do not inform domestic stakeholders about the EC's regulatory proposals so as to help them form a negotiating position (Figure 2.13). Currently, the 11 EU Member States that require stakeholder engagement to be conducted at the negotiation stage are: Cyprus, Denmark, Estonia, Finland, France, Hungary, Italy, Latvia, Poland, the Slovak Republic, and Slovenia. In Poland for example, stakeholder engagement is thorough within the government but does not include the general public (Box 2.4).

Box 2.4. Polish consultation within government at the negotiation stage of EU-made laws

The consultation mechanism on draft legislative acts was created in the Ministry of Economy and was run as a pilot under the Better Regulations 2015 program. Explicit guidance details how national stakeholders are involved in the construction of the Polish negotiating position:

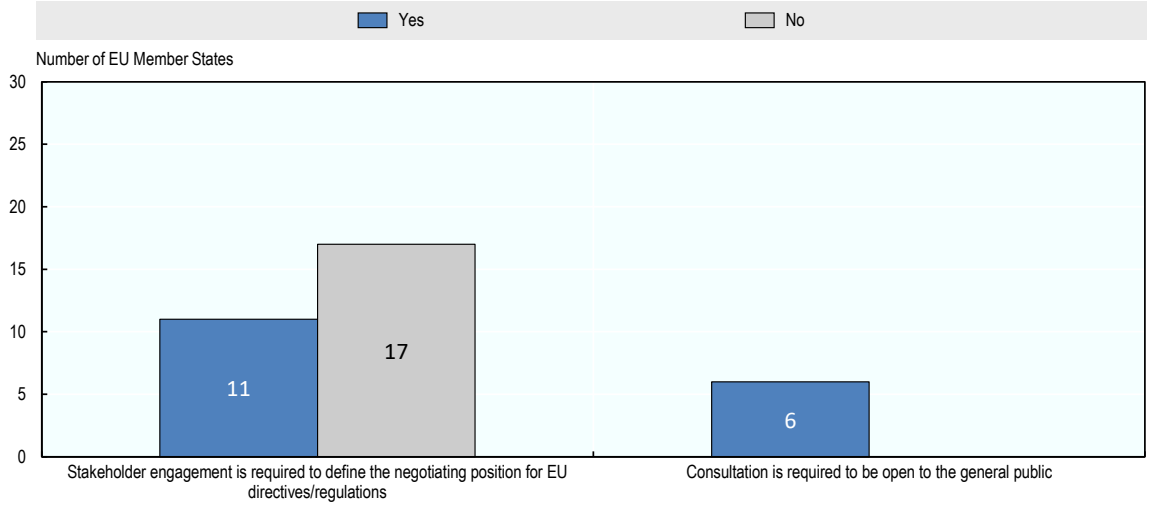
- After the official presentation of a draft EU law by the European Commission, a specifically appointed leading expert forwards the text to internal and external stakeholders for comments to form the basis of Poland's negotiating position.
- An assessment of the legal impact of the draft EU law on Polish law should be made.
- During further legislative stages, the leading expert transfers documents (e.g. Council agendas) to the stakeholders. Contact between the leading expert and stakeholders is maintained through regular information exchanges in order to update Poland's position and to inform them about the next steps of the EU legislative process (e.g. trialogues).
- The leading expert must consider changes in Poland's position in the case of changes in the draft EU law, for example due to amendments made by either the Council or the European Parliament.

There is no wider consultation with the general public to shape Poland's negotiation position.

Source: OECD, Indicators of Regulatory Policy and Governance Survey 2017, http://oe.cd/ireg; Government Legislation Centre (Poland) (n.d.), *How to use the consultation mechanism and work on EU draft legislative acts?*, https://www.rcl.gov.pl/book/255-jak-stosowa%C4%87-mechanizm-konsultacji-i-prowadzenia-prac-nad-projektami-akt%C3%B3w-legislacyjnych (accessed October 2018).

Cyprus, Denmark, France and Latvia indicated that they undertake stakeholder engagement to define a negotiating position, but do not undertake RIA at that stage. What is perhaps more stark however, is that in only Denmark, Estonia, Finland, Italy, the Slovak Republic, and Slovenia is consultation at this stage undertaken with the general public.

Figure 2.13.Requirements for Member States to conduct stakeholder engagement to define a negotiating position



Note: Data is based on 28 EU Member States.
Source: Indicators of Regulatory Policy and Governance Survey 2017, http://oe.cd/ireg.

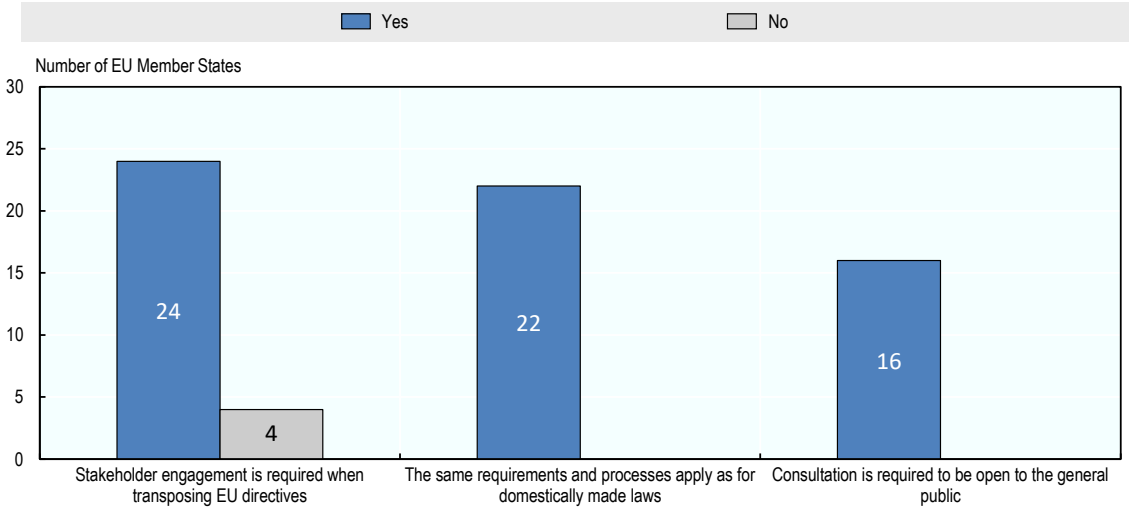
These results are somewhat surprising. As noted in Chapter 1, once the negotiation stage has been reached, the European Commission has made a decision to regulate and has put a regulatory proposal to the Council and Parliament. In that regards, consultation at this stage takes place at a very late stage of policy development. The results are surprising given the near universality of late stage consultation requirements in EU Member States for their own domestic regulatory proposals (see section above). While it is important to stress that the negotiation phase of EU directives and regulations is not analogous to late stage consultation (see Chapter 1), they would both take place at a similar phase in the policy development cycle.

Stakeholder engagement at the transposition stage

Over 80% of EU Member States indicate that they conduct stakeholder engagement when transposing EU directives into national laws (Figure 2.14, left pane). These results are closer to those of individual Member States in relation to the consultation practices on the development of their own laws (see section Stakeholder engagement in the different stages of the rule-making process).

The four EU Member States that do not have specific requirements to conduct stakeholder engagement when transposing EU directives are: France, Ireland, the Netherlands, and Portugal. In France, stakeholder engagement is required to help define a negotiating position for the development of EU directives and regulations, and not when transposing EU directives. For the latter three Member States, this represents the fact that they each have no requirement to conduct stakeholder engagement at any stage in relation to European Commission regulatory proposals.

Figure 2.14. Requirements to conduct stakeholder engagement when transposing EU directives



Note: Data is based on 28 EU Member States.
Source: Indicators of Regulatory Policy and Governance Survey 2017, http://oe.cd/ireg.

Generally speaking, the requirements to conduct stakeholder engagement when transposing EU directives are the same as they are for Member State's individual regulatory proposals (Figure 2.14, middle pane). Only in Denmark and Estonia are there explicit differences in requirements when it comes to the transposition of EU directives vis-à-vis their own consultation requirements on domestic-made laws. The Danish stakeholder engagement approach, notably the participation of stakeholders through the EU Implementation Council, relates to both the negotiation and transposition stages and was discussed in Chapter 1.

Despite the large number of Member States which conduct stakeholder engagement on the transposition of EU directives, consultation is only open to the general public in around two-thirds of those (Figure 2.14, right pane). It may well be completely appropriate that consultation on transposition focuses centrally on the legal accuracy of the EU directive being transposed. However it is also true that broader consultation can help to identify potential issues. For instance, issues associated with implementation; ensuring compliance; and creating an evidence base from which enforcement actions can be launched; and appropriate review over time — are all matters that can be identified and assessed by consulting more widely. Recent findings suggest that regulators are often not sufficiently consulted in the development of regulatory proposals, despite being 'closer to the ground' and potentially having a wealth of information on regulated entities (OECD, 2018[13]). Identifying these and related issues earlier in the policy development process can help to lessen and avoid transposition delays and thereby eschew infringement procedures and eventual financial penalties from the European Commission.

Effectiveness of stakeholder engagement

Information should be collected on the impact of regulation on the public, including their perception of regulation (Chapter 1). This helps governments to better structure their policies to address perceived issues and better prioritise reforms to focus on areas that

may warrant regulation, or where regulation is unnecessarily burdensome. While there is unlikely to be any single best practice of engagement in regulatory policy, a robust evaluation system may facilitate learning that leads to adoption of improvements over time.

Among OECD countries, reports on stakeholder engagement practices are far less frequently conducted compared to reports on the performance of RIA. While the number of reports has increased since 2014, less than one third of OECD countries are currently reporting on their stakeholder engagement practices (OECD, 2018[8]). The survey results indicate that EU Member States rarely review the performance of their consultation systems and how they work in practice (see Chapter 1). However, where evaluations have been undertaken, they have demonstrated that they can be a powerful tool; providing insights to improve the effectiveness and ultimately also the acceptance of consultation channels amongst stakeholders. In 2017, the Netherlands reviewed the extent to which its internet consultation system was valued by citizens, companies, and departmental staff, as well as whether the objectives of the legislative process were being achieved. The results indicated that internet consultation is systematically used by government officials, whilst at the same time pointed to a number of weaknesses. For instance, the evaluation report concluded the need for more methodological instructions for government officials as well as a lack of visibility for citizens and businesses how consultation comments are taken into account (PLATO BV/ Ockham IPS, 2016[14]). The European Commission also reviewed its consultation practices prior to the revision of its consultation system in 2015 (Box 2.5).

Box 2.5. European Commission evaluation of its consultation practices

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

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

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

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

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

In 2018, the European Commission started to take stock of its 2015 Better Regulation Package. This review, which also includes stakeholder consultation, will be finalised in 2019.

Source : OECD (2014a), OECD Framework for Regulatory Policy Evaluation, OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264214453-en; European Commission (2015), "Better regulation for better results – An EU agenda", retrieved from http://ec.europa.eu/smart-regulation/better_regulation/documents/com_2015_215_en.pdf (accessed September 2018); OECD (2016), Pilot database on stakeholder engagement practices in regulatory policy. First set of practice examples.

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Chapter 3. Regulatory impact assessment across the European Union

Regulatory impact assessment (RIA) is a key tool for policy makers to decide on whether and how to regulate to achieve public policy goals. RIA assists policy makers in identifying the most efficient and effective policy before making a decision. The use of RIA has expanded over the past 30 years across EU countries. This chapter analyses the EU's and EU Member States' use of RIA and explores how EU Member States consider various options and impacts when conducting RIA. It also includes a discussion of the application of individual Member State's RIA requirements to regulatory proposals of the European Commission.

Note by Turkey:
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. Turkey recognises the Turkish Republic of Northern Cyprus (TRNC). Until a lasting and equitable solution is found within the context of the United Nations, Turkey 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 Turkey. The information in this document relates to the area under the effective control of the Government of the Republic of Cyprus.

Introduction

Regulatory impact assessment (RIA) is both a tool and a process designed to help inform political decision makers on whether and how to regulate to achieve public policy goals. Improving the evidence base through an *ex ante* impact assessment is one of the most important regulatory tools available to governments. The aim is to improve the design of regulations by assisting policy makers identify and consider the most efficient and effective options — including non-regulatory options — before making a decision. One method of doing so is by analysing the expected costs and benefits of regulation and of alternative means of achieving policy goals and to identify the approach that is likely to deliver the greatest net benefit to society.

The consideration of a range of alternative approaches to traditional "command and control" regulation — including complementary measures such as co-regulation — helps to ensure that the most efficient and effective approaches are used in attaining policy goals. Experience shows that governments must lead strongly to overcome inbuilt inertia, risk aversion and a "regulate first, ask questions later" culture. At the same time, care must be taken when deciding to use light-handed approaches such as self-regulation, to ensure that public policy objectives are achieved.

To that end, the *OECD Recommendation of the Council on Regulatory Policy and Governance* provides that member countries should "Integrate Regulatory Impact Assessment (RIA) into the early stages of the policy process for the formulation of new regulatory proposals. Clearly identify policy goals, and evaluate if regulation is necessary and how it can be most effective and efficient in achieving those goals" (OECD, 2012[1]).

For nearly 20 years the European Union has focused on improving regulatory outcomes through its better regulation initiatives (see Chapter 1). As part of that, RIA has been recognised as a centrally important regulatory management tool by the European Commission.

This chapter analyses EU Member States' RIA requirements and practices as reported in the Indicators of Regulatory Policy and Governance (iREG) survey and its extension to all EU Member States. The reader's guide explained the construction of the surveys. This chapter also presents results from the iREG survey as they relate to the European Union and other OECD member countries where appropriate. The section below presents the key findings of EU Member States' RIA requirements and their implementation. The second section provides an overview of key results that emanate from the iREG survey. The third section discusses the scope of RIA in EU Member States, examining exceptions to conducting RIA, and requirements to adhere to the proportionality principle. The section on the application of Member States' RIA to EU legislation covers EU Member States' RIA requirements as they relate to EU-made laws. The section on options considered in RIA discusses the requirements and implementation of the use alternative options in RIA. The following section discusses the types of impacts assessed by EU Member States. The section on effectiveness of RIA presents information on the extent to which Member States have assessed the effectiveness of the RIA systems in practice.

Key findings

Nearly all EU Member States have embedded RIA as a core part of their regulatory management tools, and generally have explicit high-level political support for RIA. Malta does not currently have RIA requirements for primary laws, and Bulgaria and Croatia have no RIA requirement for subordinate regulations.

There is a gap between the level of outward commitment and what is witnessed in practice. In particular, there is a substantive gap between the implementation of RIA in practice to primary laws vis-à-vis subordinate regulations. This is a particularly acute problem given the lack of legislative oversight afforded to most delegated legislation. Only half of the EU Member States systematically publish RIA for the purposes of consultation on regulatory proposals relating to primary laws.

A central tenet of RIA is that it be proportionate to the level of expected impacts. Part of the proportionality principle refers to the need to triage regulatory proposals so as to ensure that impact assessment resources are appropriately targeted. Despite their importance, EU Member States do not use threshold tests to filter regulatory proposals; although the majority do have a requirement that the level of impact assessment undertaken be proportionate to the regulatory proposal's expected impacts.

Only around half of EU Member States have a requirement to consider the baseline or 'do nothing' option. Perhaps more worryingly, in relation to subordinate regulations, in less than half of EU Member States are alternatives always identified and assessed. However, an integral part of a well-functioning RIA system is ensuring that all feasible options — including non-regulatory options — are systematically considered and assessed. Considering various options helps to inform decision makers about the expected impacts of regulatory proposals, and by doing so, helps to reduce the risk of regulatory failure.

EU Member States generally assess the following impacts: government, business (including small business), competition, and the environment. However, it should be noted that the impact assessment generally only relates to the preferred regulatory option and often does not involve a quantitative assessment of the regulation's costs and benefits. Quantification of benefits are less common across EU Member States than quantifying costs, which can make assessing whether regulations justify their costs difficult.

The European Commission requires that RIA be conducted for regulatory proposals with significant economic, environmental or social impacts on the EU. The Commission publishes an inception impact assessment (IIA) that outlines the policy problem and a preliminary assessment of the anticipated impacts. Following public consultation on the IIA, the Commission undertakes a full RIA including data collection and evidence gathering, as well as public consultations. RIAs are subject to scrutiny by the Regulatory Scrutiny Board, where regulatory proposals may need to be revised.

In terms of EU-made laws, RIA is much more likely to be required when transposing EU directives than it is to form the basis of individual EU Member States' negotiating position. Where Member States do not have formal requirements to conduct RIA at the negotiating phase, they do rely on the European Commission's impact assessments, albeit not systematically. Generally when RIA is conducted for transposing EU directives, the same procedures apply as is the case with domestically made laws. Around half of the EU Member States systematically require an assessment of whether provisions have been added at the national level going beyond the requirements set out in the EU directives as part of their RIA when transposing EU directives.

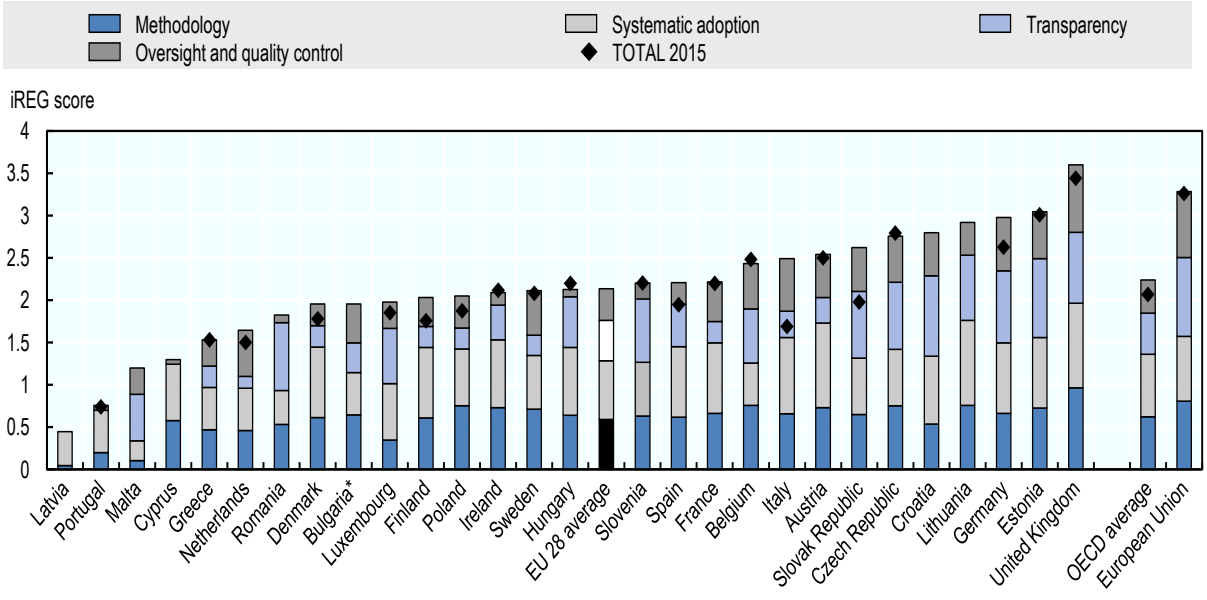
Assessments of the effectiveness of RIA systems have been undertaken in a number of EU Member States, and include providing guidance on good regulatory practices, however these assessments would benefit from an increased focus on how systems can be improved over time.

General trends in RIA across the EU

There is quite a lot of variation across EU Member States' RIA systems, reflected by the variance in composite indicators relating to RIA on primary laws (Figure 3.1). The reader's guide at the beginning of this report covered the construction of the composite indicators, including the disclaimers concerning conclusions that may be drawn given the inherent limitations of cross-country comparable composite indicators.

The variance across Member States is quite pronounced and is around twice the variance that exists for stakeholder engagement in relation to primary laws. EU Member States have strong RIA requirements in place. Italy, Lithuania, and the United Kingdom have formal threshold tests for determining whether RIA should be undertaken at all; and Austria, Denmark, Estonia, Lithuania, Spain, and the United Kingdom have formal threshold tests to determine whether a simplified or full RIA needs to be undertaken. Croatia, Hungary, Ireland, Italy, and Slovenia include formal consequences in instances where regulatory proposals bypass the RIA system during regulatory design.

Figure 3.1. Composite indicators: regulatory impact assessment for developing primary laws, 2018



Notes: Data for 2015 is based on the 34 countries that were OECD members in 2014 and the European Union, which included 21 of the current 28 EU Member States. The OECD average is based on the 34 member countries at the time of the survey. Data for 2018 includes the remaining EU Member States of Bulgaria, Croatia, Cyprus, Malta and Romania. The more regulatory practices as advocated in the 2012 Recommendation a country has implemented, the higher its iREG score. * In the majority of EU Member States, most primary laws are initiated by the executive, except for Bulgaria, where a higher share of primary laws are initiated by the legislature.
Source: Indicators of Regulatory Policy and Governance Surveys 2014 and 2017, http://oe.cd/ireg.

The survey results indicate that EU Member States have sound RIA methodologies in place for some areas, such as the specific impacts that are assessed. This is especially the case in the United Kingdom. However, it also suggests that there is room for improvement in RIA, such as in considering various options when designing regulatory

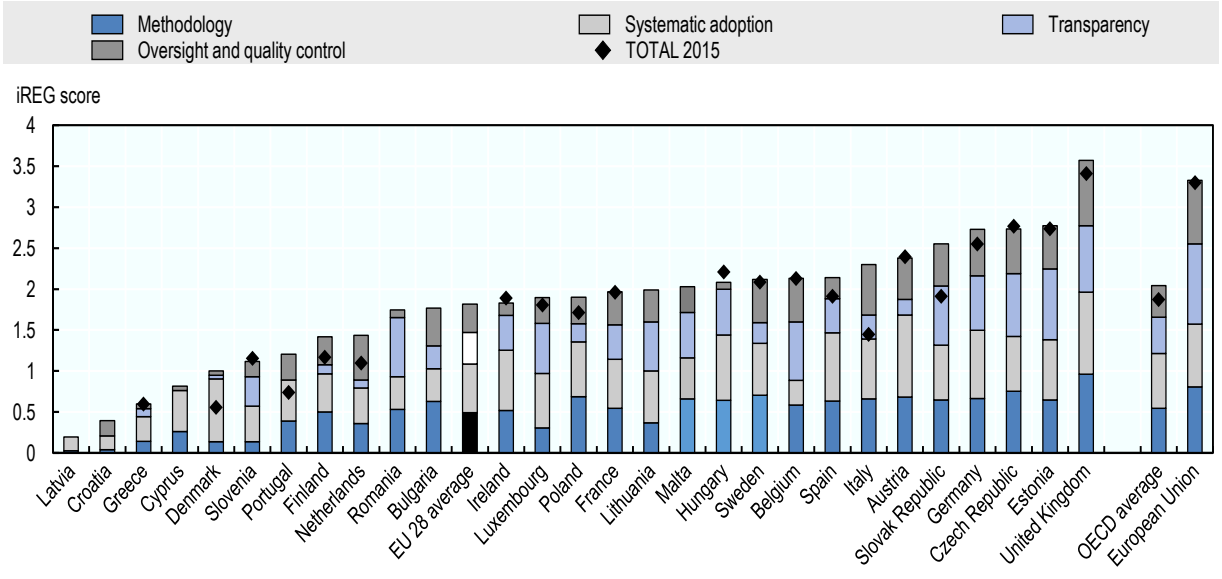
proposals which relate to primary laws. Austria, Estonia, France, Italy, Poland, and the United Kingdom all have strong *ex ante* requirements in place to ensure that achievement of the regulation's goals are assessed.

Transparency of RIA is relatively low across EU Member States and is just below the OECD average. RIAs are not made public for consultation at an early stage of policy development, and even after a regulatory decision has been made; only half of the EU Member States systematically publish RIA for consultation.

Oversight and quality control is the weakest area surveyed, and is lower than the OECD average. General quality control mechanisms such as assessing their own RIA systems and parliamentary oversight tend to be practises observed in only a few EU Member States. General oversight is reasonably strong in the Estonian, German, Lithuanian, and British RIA systems. The survey results indicate that Member States (and OECD countries) still have some way to go in order to reach the practices envisaged by both the European Union (European Commission, 2005[2]) and the *OECD Recommendation*.

Composite indicator scores for RIA relating to subordinate regulations are worse on average across each of the four dimensions than the respective scores for primary laws (Figure 3.2). Across the four areas, the results illustrate a similar pattern in that the strongest area is systematic adoption, followed by methodology, with transparency and oversight and quality control further behind.

Figure 3.2. Composite indicators: regulatory impact assessment for developing subordinate regulations, 2018



Notes: Data for 2015 is based on the 34 countries that were OECD members in 2014 and the European Union, which included 21 of the current 28 EU Member States. The OECD average is based on the 34 member countries at the time of the survey. Data for 2018 includes the remaining EU Member States of Bulgaria, Croatia, Cyprus, Malta and Romania. The more regulatory practices as advocated in the 2012 Recommendation a country has implemented, the higher its iREG score.
Source: Indicators of Regulatory Policy and Governance Surveys 2014 and 2017, http://oe.cd/ireg.

Despite the strongest area being systematic adoption, there remains room for improvement. Compared with primary laws, RIA is conducted in practice less systematically across EU Member States. While some of this may be due to the fact that subordinate regulations can be of a more technical nature, it does not mean that the impacts are not significant.

In terms of RIA methodology, EU Member States tend to analyse a narrower range of economic, social, and environmental impacts for regulatory proposals relating to subordinate regulations, compared with those assessed for regulatory proposals relating to primary laws. In part, this can be explained by the fact that regulatory requirements are less comprehensive for subordinate regulations than they are for primary laws. Nevertheless, it is not immediately clear why RIA requirements should — by virtue of the regulatory instrument alone — be less stringent for subordinate regulations than for primary laws. Indeed, at the margin, this may create poor incentives for policy makers to design regulatory proposals as subordinate regulations where they should more appropriately be designed as primary laws, so as to subvert some RIA requirements, as well as potential parliamentary scrutiny.

The level of transparency associated with regulatory proposals relating to subordinate regulations is less systematic than it is for regulatory proposals relating to primary laws. In particular, the transparency covering instances where RIA is not conducted is more sporadically applied across the EU Member States than it is in relation to primary laws.

Similarly to regulatory proposals relating to primary laws, regulatory proposals relating to subordinate regulations fare poorly in terms of oversight and quality control. Where there are differences between the application of RIA to primary laws and subordinate regulations, they mainly relate to quality control aspects such as whether a method exists to ensure that an assessment of impacts is completed; as well as in relation to factors affecting oversight such as whether a government body outside of the proposing ministry is responsible for RIA quality control.

Scope of RIA

The application of RIA to regulatory instruments should be optimised to promote the best policy outcomes. Taking a proportionate approach is recommended so that the resources required by RIA are applied to those regulations likely to have the most significant impact on societal welfare (OECD, 2009[3]).

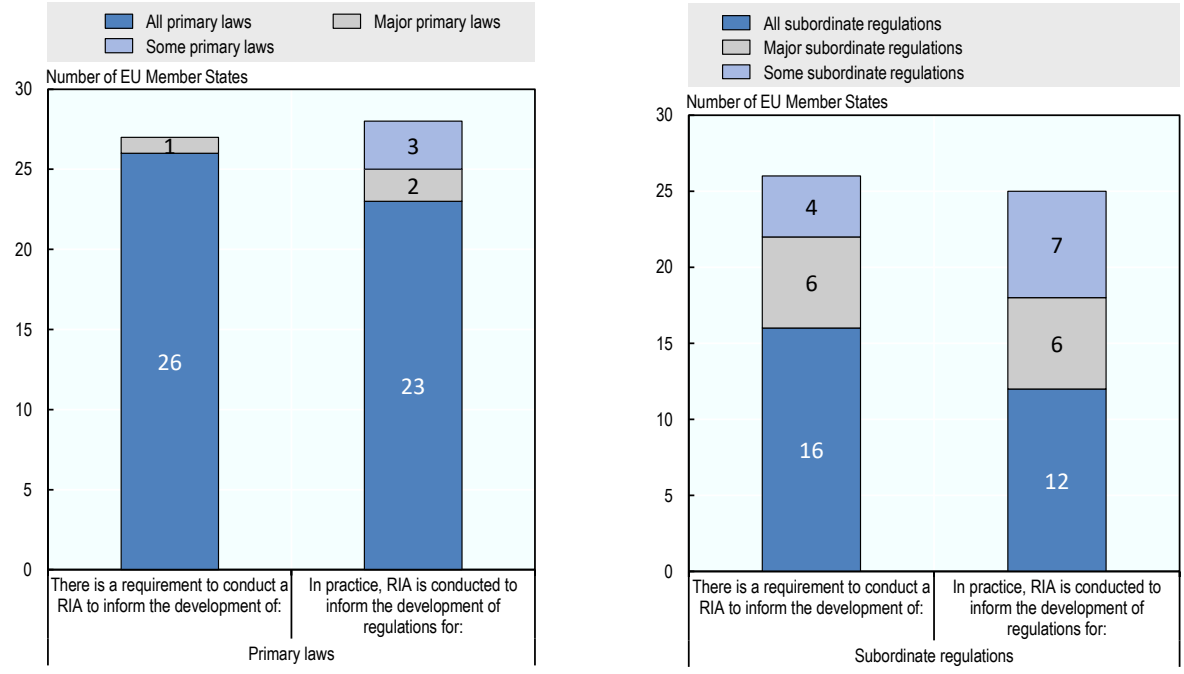
The *Annex to the OECD Recommendation* provides that member countries should "Adopt *ex ante* impact assessment practices that are proportional to the significance of the regulation, and include benefit cost analyses that consider the welfare impacts of regulation taking into account economic, social and environmental impacts including the distributional effects over time, identifying who is likely to benefit and who is likely to bear costs" (OECD, 2012[1]).

The vast majority of EU Member States have a universal requirement to conduct RIA to inform the development of primary laws (Figure 3.3). While this strong commitment to RIA is crucially important, it is worth noting that there is a gap between the commitment and the extent to which it occurs in practice.

The application of RIA to subordinate regulations is cause for concern: in only half of EU Member States is there a universal requirement to conduct RIA. That said, six Member States have a requirement to conduct RIA in relation to major subordinate regulations,

perhaps indicating a more proportionate approach. It is important to recall that subordinate laws are generally subject to substantially less parliamentary oversight than primary laws, yet can have significant impacts on societal wellbeing. Moreover, subordinate regulations are often responsible for bringing primary laws "to life", and as such represent a substantive proportion of the regulatory burden faced by citizens and business. Therefore, it is important to ensure that subordinate regulations are formed on an appropriately sound evidential basis.

Figure 3.3. Requirements and practice of conducting RIA

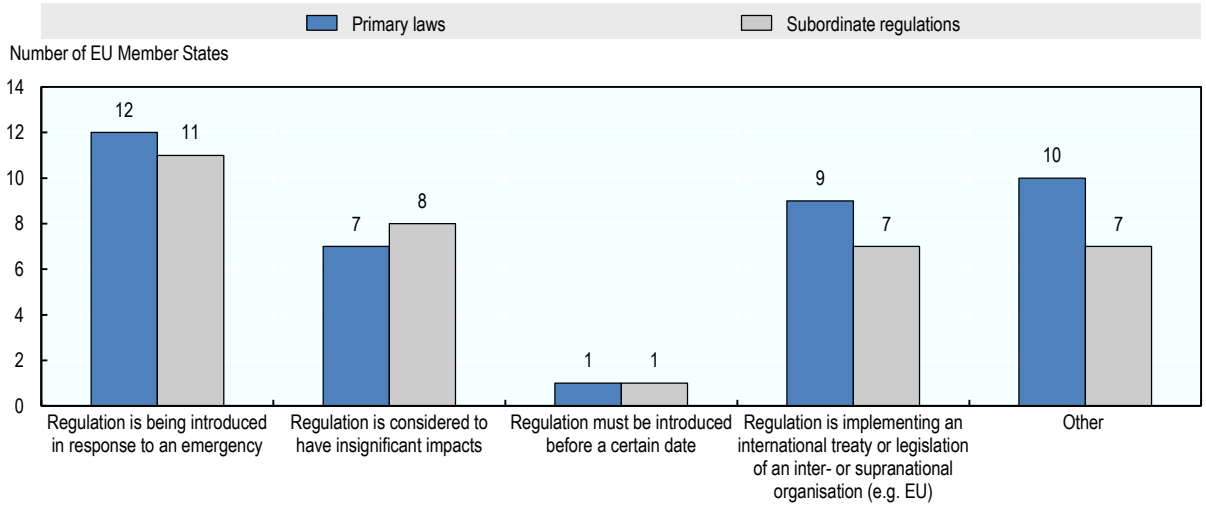


Note: Data is based on 28 EU Member States.
Source: Indicators of Regulatory Policy and Governance Surveys 2017, http://oe.cd/ireg.

Exceptions to conducting RIA

Despite having broad requirements in place to conduct RIA, EU Member States currently have a number of exceptions (Figure 3.4). Around 40% of EU Member States provide for an exception to conducting RIA where regulation is introduced in response to an emergency. The European Commission currently also has exceptions to RIA relating to emergency measures, as well as in relation to regulatory proposals which have insignificant impacts.

Figure 3.4. Exceptions to conducting RIA



Note: Data is based on 28 EU Member States.
Source: Indicators of Regulatory Policy and Governance Survey 2017, http://oe.cd/ireg.

A number of Member States except RIA requirements where regulation relates to the implementation of international law, as well as in relation to a range of other circumstances. For instance in Belgium, laws that relate to the organisation of the State itself; implement a co-operation agreement between the federal state and regional entities; or relate to national security or public order are excepted from RIA. In Ireland, the following types of laws are excepted from RIA:

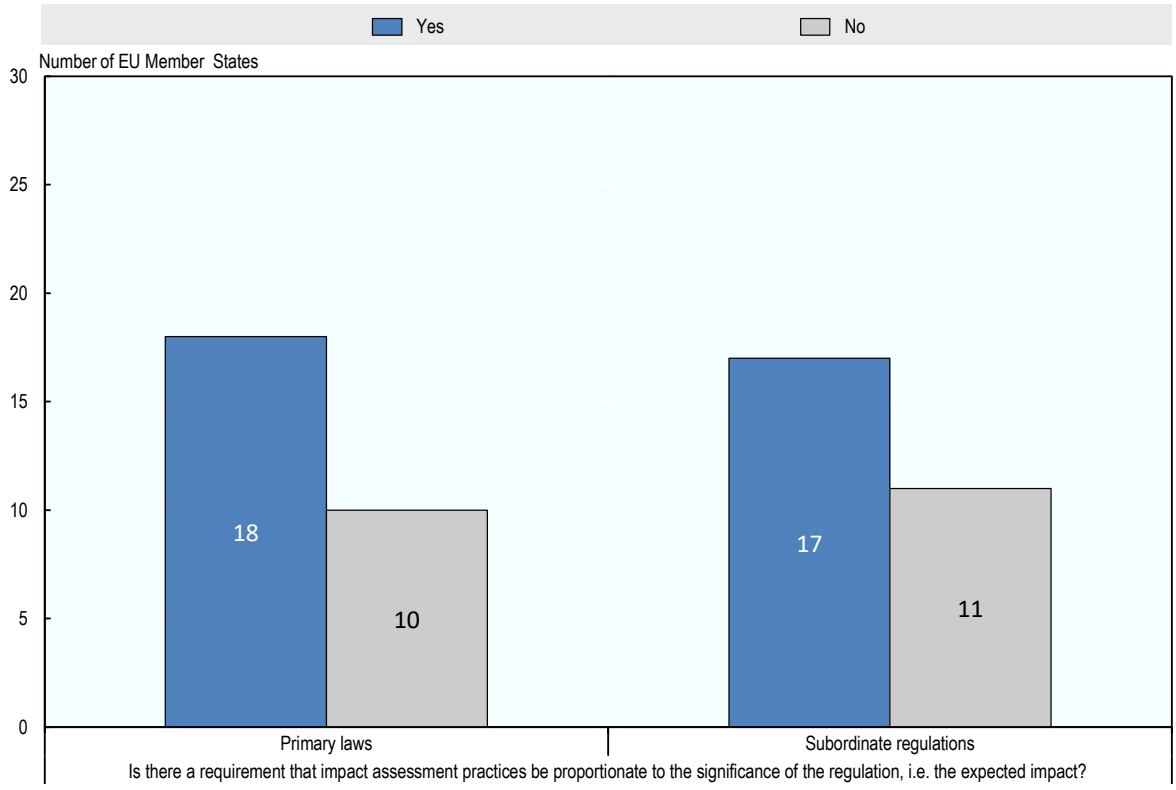
- Consolidation of existing legislation where no regulatory changes are introduced
- The law is as a direct consequence of a Court decision and leaves no discretion to consider alternative options or allow for meaningful consultation
- Where the publication of RIA may not be appropriate, for example in the imposition of tax laws or the imposition of charges because of their sensitivity and the need to guard against possible invasion or avoidance.

Proportionality and RIA threshold tests

The proportionality principle is at the heart of impact assessment in both theory and practice. It governs the depth and breadth of analysis to be undertaken; the stakeholders to consult with; as well as considering matters such as data collection, compliance and enforcement, and eventual review.

Proportionality requirements exist in around 60% of EU Member States (Figure 3.5). The OECD has long endorsed the proportionality principle (OECD, 1995[4]), and it was formalised as part of the *OECD Recommendation* in 2012 (see above). Formal proportionality requirements are part of the RIA systems in nearly 70% of OECD member countries.

Figure 3.5. Proportionality requirements when conducting impact assessments



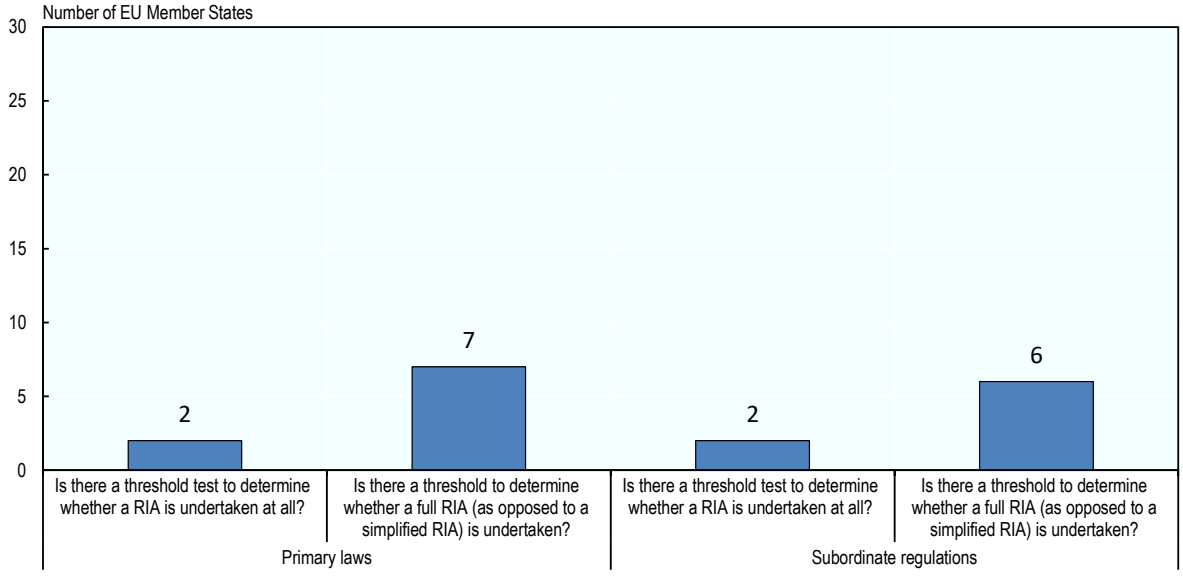
Note: Data is based on 28 EU Member States.
Source: Indicators of Regulatory Policy and Governance Survey 2017, http://oe.cd/ireg

RIA thresholds tests are important for a number of reasons. Firstly, they help to ensure that regulations with significant societal impacts are adequately assessed before being introduced. Secondly, they ensure that government resources are not unduly wasted in assessing regulatory proposals with only minor impacts, where the costs of conducting RIA would outweigh its benefits. In turn, this also helps to avoid consultation fatigue (and associated wasted resources) with the community — consultations should be conducted in circumstances where the regulatory impacts are expected to be significant. Thirdly, where the criteria are clear and straightforward to apply in practice, they help to improve the transparency of the overall RIA system. This helps to build trust in the community that regulatory proposals are appropriately subjected (and excepted) to RIA.

It is important that RIA threshold tests are based on the expected significance of impacts. The impacts include both positive and negative impacts to any area of society, and as such ought to be broader than assessing business impacts for instance. Despite their importance however, evidence from the iREG survey and its extension to all EU Member States indicates that EU Member States have been slow adopters. Only Italy, Lithuania, and the United Kingdom have a threshold test to determine whether RIA should be undertaken at all (Figure 3.6). None of the three Member States' tests are explicitly based on the expected significance of the regulatory proposal's economic, social and environmental impacts. That said, Italy's threshold test does consider whether compliance costs are expected to be low, that there are a small number of affected entities, the regulatory proposal requires a small amount of public resources, and that there is a

limited expected impact on the competitive structure of the affected market. It should also be noted that the European Commission has a comprehensive threshold test based on the regulatory proposal's anticipated impacts to determine whether RIA should be undertaken at all.

Figure 3.6. RIA threshold tests



Note: Data is based on 28 EU Member States
Source: Indicators of Regulatory Policy and Governance Survey 2017, http://oe.cd/ireg.

A greater number of EU Member States have a threshold to determine whether a full RIA (as opposed to a simplified RIA) is undertaken, yet it is still in the vast minority. The lack of a threshold at this stage of regulatory development is reflective more broadly of the dearth of two-stage RIA processes (preliminary/simplified and full) across EU Member States.

Overall, it appears that EU Member States have requirements to adhere to the proportionality principle, but often lack a formal threshold test with transparent criteria about when, and to what extent, RIA should be conducted.

The application of Member States' RIA to EU legislation

Similarly to stakeholder engagement (Chapter 2), individual EU Member States have processes in place which require RIA to be conducted at the transposition stage in relation to EU-made laws, but much less at the negotiating phase. The process of creating EU-made laws was described in detail in Chapter 1, and the process that the European Commission follows for its RIA is described in Box 3.1.

Box 3.1 The European Commission's impact assessment process

Impact assessments are required for all of the Commissions initiatives when the expected economic, environmental or social impacts of EU action are likely to be significant. The lead Commission service should establish as early as possible in the Commissions' internal political validation process whether a RIA is required. Once a decision has been made that a proposal will be prepared, the Commission publishes an inception impact assessment (IIA) for all proposals subject to an impact assessment. IIAs present an outline of the policy problem, an initial mapping of the policy options as well as preliminary assessment of expected impacts. Where no impact assessment is prepared, the justification should be made public in a roadmap.

Following the public feedback period on the IIA (see Chapter 2), the Commission prepares and undertakes the full impact assessment process, including data collection, public and stakeholder consultations, expert hearings and/or seeking additional scientific evidence. The results of the impact analysis will be summarised in an impact assessment report and sent to the Regulatory Scrutiny Board (RSB) for a quality assurance review. Following potential revisions of the impact assessment based on the opinion from the RSB, the RIA is subject to internal consultation between the Commission's departments together with the accompanying policy initiative. Once a regulatory proposal has been adopted by the College of Commissioners, the proposals and its accompanying impact assessment will be published online for feedback and sent the co-legislators for the negotiation of the Commission's proposals.

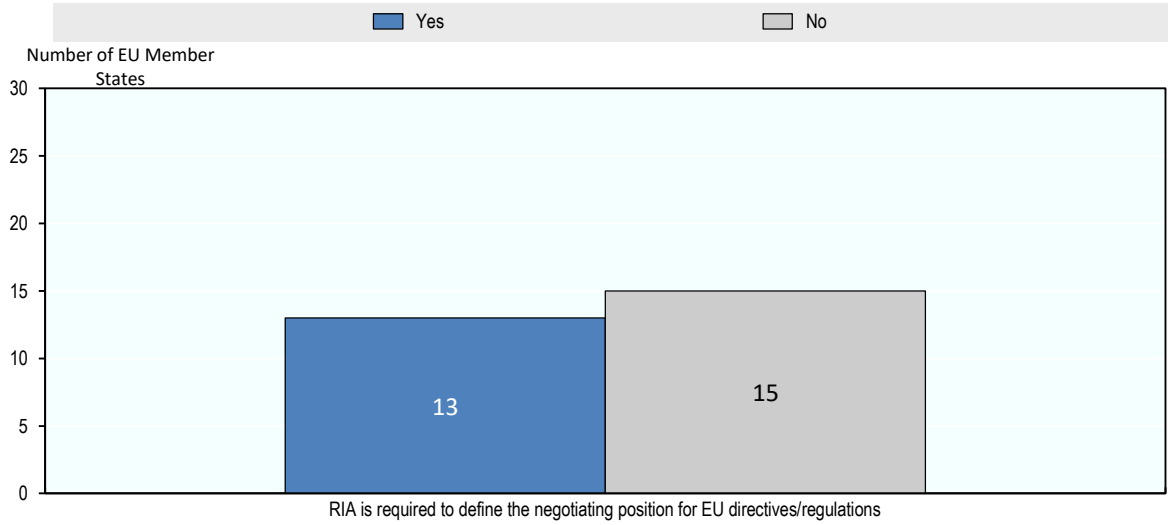
Source: European Commission (2017), Better Regulation Guidelines, https://ec.europa.eu/info/law/law-making-process/planning-and-proposing-law/better-regulation-why-and-how/better-regulation-guidelines-and-toolbox_en (accessed September 2018); European Commission (2017), Better Regulation Toolbox, https://ec.europa.eu/info/better-regulation-toolbox_en (accessed September 2018).

Member States' requirements to conduct RIA during the negotiation stage

RIA provides the largest net benefit to policy makers when it is commenced early in the regulation-making process; and the same applies to EU-made laws. Once the European Commission has reached a regulatory decision, individual Member States can begin to consider the individual impacts of it.

There are currently 13 EU Member States that have requirements to conduct RIA so as to define a negotiating position on European Commission regulatory proposals (Figure 3.7). The 13 Member States are: Austria, Bulgaria, Estonia, Finland, Germany, Hungary, Ireland, Italy, Lithuania, Malta, Poland, the Slovak Republic, and Slovenia.

Figure 3.7. Requirements to conduct RIA to define a negotiating position



Note: Data is based on 28 EU Member States.
Source: Indicators of Regulatory Policy and Governance Survey 2017, http://oe.cd/ireg.

Germany has a specific threshold test during the negotiating stage. Where the Commission's own impact assessment identifies expected compliance costs in excess of €35 million per year across the EU, German Ministries are required to carry out RIA to assess the compliance costs that are expected to arise in Germany. The RIA then forms the basis for the Federal Government in its negotiation of the legislative proposal at the European Union level.

In Ireland, departments are required in-principle to conduct RIAs on all Commission proposals leading to EU directives and significant EU regulations. The revised RIA guidelines indicate that the RIA process should be commenced as early as possible as and no later than four weeks from when the Commission publishes the proposed legislation and its own impact assessment. The RIA should contain a sufficient level of analysis of key issues to properly inform Ireland's negotiating position, thereby minimising any potential negative implications for Ireland. The guidelines encourage officials to update the RIA periodically to take account of significant changes introduced at various stage of the proposal's development (Department of the Taoiseach (Ireland), 2009[5]).

In Lithuania, policy makers are required to complete a 'basic impact assessment' in reaching its negotiation position. Basic impact assessments examine objectives and options for implementation of draft legislation, including quantitative data whenever possible. Extended impact assessments in Lithuania are more detailed and provide for more in-depth analysis when basic impact assessments are deemed insufficient or when substantive social, political or economic impacts are likely to materialise after implementation (Government of Lithuania, 2008[6]).

In addition to conducting RIA, Estonia, Hungary, Italy, Poland, the Slovak Republic, and Slovenia all indicated that they undertake stakeholder engagement during the negotiation stage (see Chapter 2).

For the 15 EU Member States that are not required to conduct RIA to inform a negotiating position, they are generally split on whether and to what extent they use the European Commission's impact assessment (Table 3.1).

Table 3.1. Use of the European Commission's impact assessment

To inform a negotiating position where no RIA requirement exists at an individual EU Member State level

	Always	Frequently	Sometimes	Never
Member States	United Kingdom	France, Romania	Belgium, Croatia, Czech Republic, Luxembourg, Netherlands	Cyprus, Denmark, Greece, Latvia, Portugal, Spain, Sweden

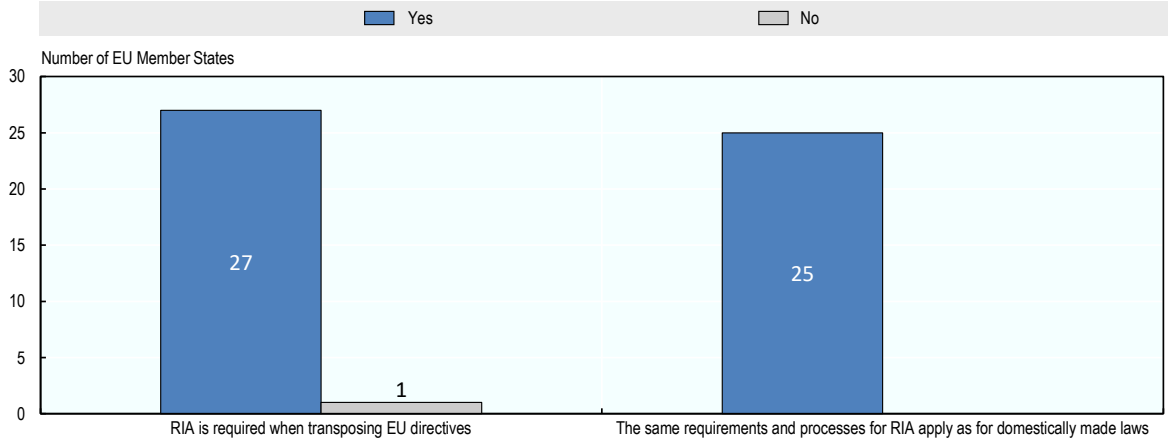
Note: Data is based on 28 EU Member States.
Source: Indicators of Regulatory Policy and Governance Survey 2017, http://oe.cd/ireg.

In France for example, the 2017 Guidance on drafting legal norms provides that national impact assessments of transposition laws must include a reference to the impact assessment performed by the European Commission (Premier Ministre Secrétariat Général du Gouvernement, Conseil d'Etat (France), 2017[7]).

RIA at the transposition stage

Nearly all EU Member States are required to conduct RIA when transposing EU directives into national laws (Figure 3.8). The only Member State that does not require RIA is Romania. This is reflective of the fact that RIA for the transposition of EU directives is explicitly excepted under Article 6(2)(c) of Government Decision No. 561/2009.

Figure 3.8. Requirements to conduct RIA when transposing EU directives



Note: Data is based on 28 EU Member States.
Source: Indicators of Regulatory Policy and Governance Survey 2017, http://oe.cd/ireg.

In France, the 2017 Guide on the Drafting of Laws highlights the Prime Minister's Administrative Regulation (*circulaire*) which provides that RIA must be undertaken at the earliest moment possible during the negotiation phase of draft EU laws. Once the EU

directive is published, a legal impact assessment of transposition measures is undertaken, with a particular focus on precise and unconditional provisions. On EU regulations, the impact assessment is limited to the legal modifications that arise from the regulation's direct effect (Premier Ministre Secrétariat Général du Gouvernement, Conseil d'Etat (France), 2017[7]).

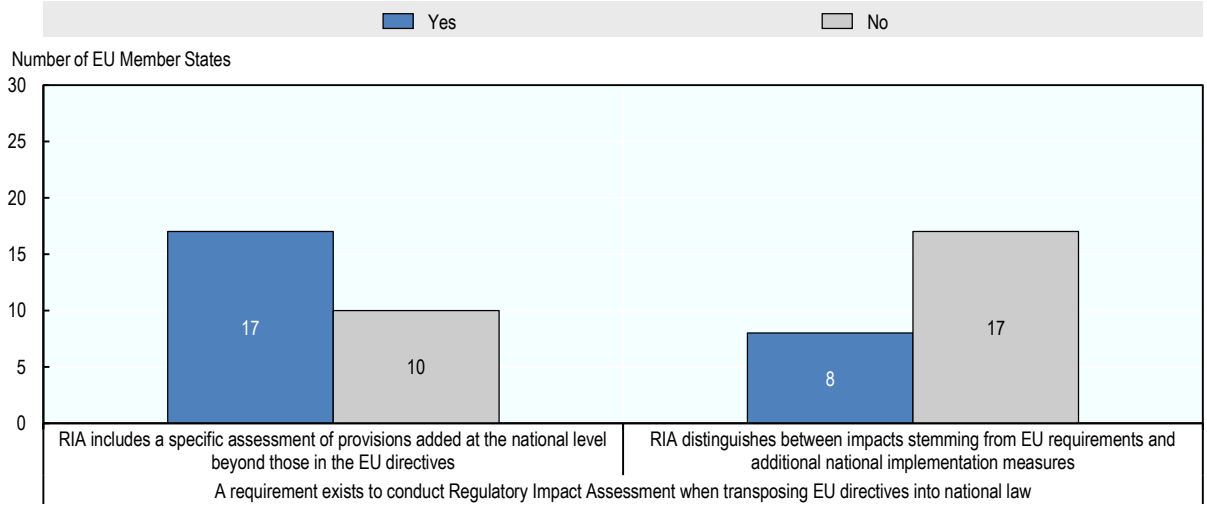
Generally, the same RIA guidelines apply to the transposition of EU directives as they do to domestically-created laws. To some extent this is to be expected: transposing EU directives often includes amending existing national laws or developing new domestic regulations. The only countries where this is not the case are Romania, Estonia, and Sweden. Romania does not have a RIA requirement for EU directives, whereas domestic procedures do apply to domestically-created laws.

Estonia has produced bespoke guidance on domestic procedures to follow when dealing with EU-made laws. It is required that policy makers undertake a preliminary impact assessment which provides details on the expected Estonian budgetary impact of implementing the proposal, and the expected impacts to specific Estonian sectors and groups. In particular, it is required to indicate the data sources utilised; note whether a more detailed RIA is required; as well as to highlight significant effects on Estonia that the European Commission has not addressed in its impact assessment or where the assessments differ.

Requirements to assess gold plating

Just over half of the EU Member States include a specific assessment of provisions added at the national level which go beyond those established in the EU directive (Figure 3.9, left pane), so called "gold plating" (Box 3.2). This assessment is in effect an assessment of the total regulatory impacts, that is those imposed by the EU and then additionally via the individual Member State.

Figure 3.9. Requirements to assess gold plating and national additional implementation measures



Note: Data is based on 28 EU Member States.
Source: Indicators of Regulatory Policy and Governance Survey 2017, http://oe.cd/ireg.

Some Member States have oversight institutions in charge of identifying gold plating of EU directives. For instance in the Slovak Republic, the Better Regulation Center is responsible for, among other things, identifying gold plating of EU directives. Having an entity directly responsible for assessing gold plating may provide feedback pressures on regulatory agencies when transposing EU directives. Similar efforts to provide oversight of the transposition of EU directives with the aim to avoid over-implementation in Denmark were discussed in Chapter 1.

Box 3.2. Gold plating of EU directives

Gold plating is a term specifically used in the EU context and describes over-implementation of an EC directive through the imposition of national requirements going beyond the actual requirements of the directive. Directives allow Member States to choose how to meet the objectives set out in the directive, adapting their approach to their own institutional and administrative cultures. Moreover, many directives are minimum directives allowing Member States to go beyond their requirements. It is therefore often at this stage that additional details and refinements, not directly prescribed by the directive, are introduced. These can go well beyond the requirements set out in the directive, resulting in extra costs and burdens.

Source: OECD (2009), "Better Regulation in Europe: An OECD Assessment of Regulatory Capacity in the 15 Original Member States of the EU, Project Glossary", OECD, Paris, https://www.oecd.org/gov/regulatory-policy/44952782.pdf.

In its transposition guidance from February 2018, the UK Government included a guiding principle to ensure that UK businesses are not put at a competitive disadvantage with their European counterparts. Consequently, the United Kingdom should not exceed the minimum requirements of EU directives. Any gold plating must be explained in the RIA and is subject to oversight by the Reducing Regulation Committee, which was created in May 2010 to scrutinise transposition plans (Department of Business, Energy & Industrial Strategy (UK), 2018[8]). Similarly, the Czech Regulatory Impact Assessment Guidelines from February 2016 include an obligation to identify whether the transposition of EU directives goes beyond what is required by EU law. However, where the transposed directive provides for no discretion, or the draft regulation transposing the EU law does not exceed the minimum requirements, the draft regulation is exempted from Czech RIA requirements (Government of the Czech Republic, 2016[9]).

Whilst requirements to assess gold plating exists in just over half of the EU Member States, only eight are required to assess the marginal impact that the gold plating provisions have had (Figure 3.9, right pane). In Sweden for example, the consequences of regulations going beyond EU law are supposed to be separately reported in impact assessments. In particular, competition effects on companies can be reported under a specific heading. This does not apply exclusively to the transposition of EU directives, but also to the adjustments that might be required at national level to implement EU regulations. Examples of drafting templates are given to assist Swedish officials (Swedish Agency for Economic and Regional Growth, 2018[10]).

Options considered in RIA

In order to best assist decision makers in making better informed decisions, it is important that all feasible options are canvassed at an early stage of regulatory development. Consultation at an early stage is therefore important to ensure that all feasible options are

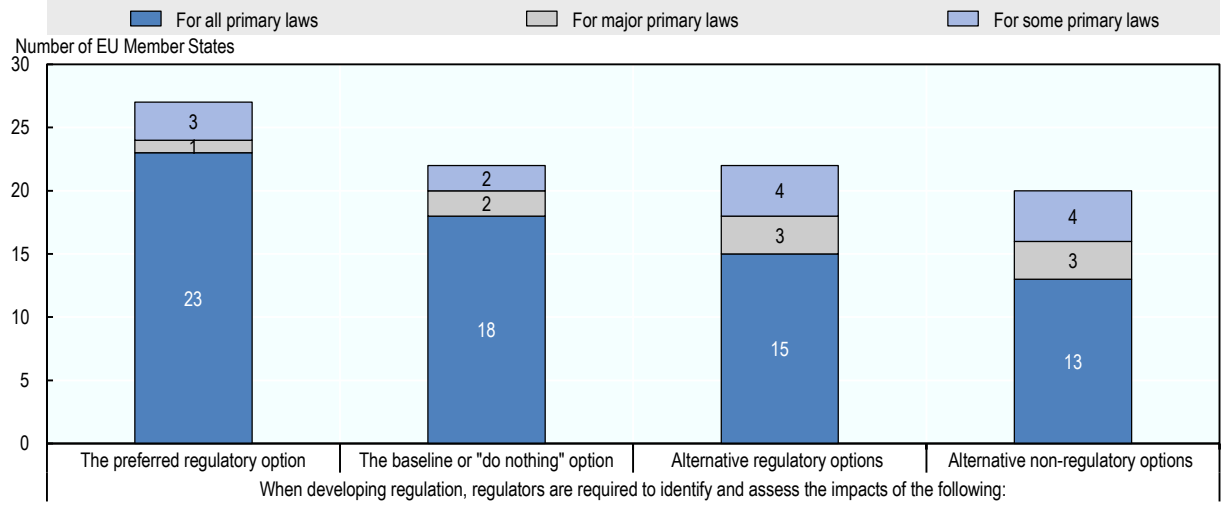
genuinely considered and assessed (see Chapter 2). The *OECD Recommendation* provides that member countries should "Consider means other than regulation and identify the tradeoffs of the different approaches analysed to identify the best approach" (OECD, 2012[1]).

The consideration of alternative options is further elaborated on in the *Annex to the OECD Recommendation*: "*Ex ante* assessment policies should include a consideration of alternative ways of addressing the public policy objectives, including regulatory and non regulatory alternatives to identify and select the most appropriate instrument, or mix of instruments to achieve policy goals. The no action option or baseline scenario should always be considered. *Ex ante* assessment should in most cases identify approaches likely to deliver the greatest net benefit to society, including complementary approaches such as through a combination of regulation, education and voluntary standards" (OECD, 2012[1]). In a previous study of 15 EU Member States almost a decade ago, it was found that alternatives to regulation were not given sufficient attention, and that encouragement to consider alternatives was not always prevalent in impact assessment processes (OECD, 2009[11]).

The European Commission requires policy makers to identify and assess the impacts of: the preferred regulatory option; the baseline or 'do nothing' option; and regulatory and non-regulatory alternatives—in relation to all major regulatory proposals.

In 26 EU Member States, the preferred regulatory option needs to be identified and assessed for regulatory proposals relating to primary laws (Figure 3.10). The baseline or 'do nothing' option is systematically considered as part of RIA in around two-thirds of EU Member States. Regulatory and non-regulatory alternatives are universally assessed in half of the EU Member States. Despite the recommendation above, OECD member states' consideration of various policy options is in fact less prevalent than those relating to the EU Member States: around 80% of OECD members are systematically required to assess the preferred regulatory option; with broadly comparable results in terms of assessing the baseline options, and regulatory and non-regulatory alternatives.

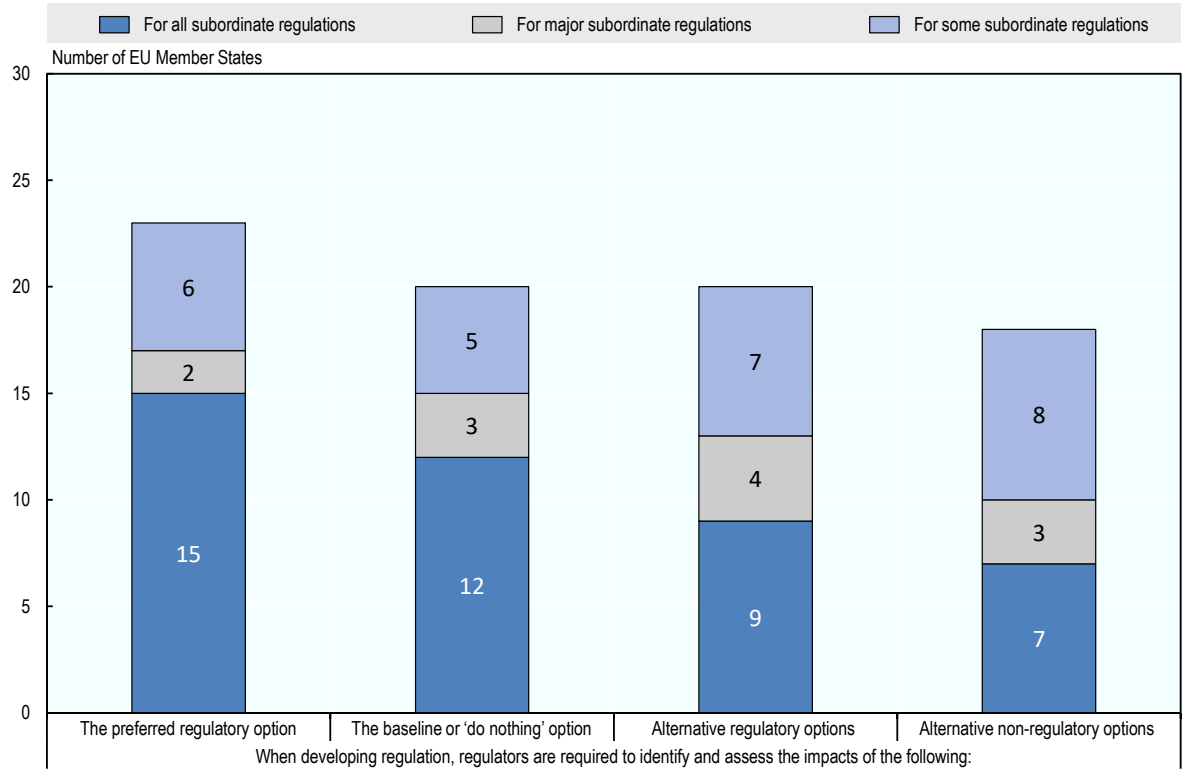
Figure 3.10. Consideration of various options in RIA for primary laws



Note: Data is based on 28 EU Member States.
Source: Indicators of Regulatory Policy and Governance Survey 2017, http://oe.cd/ireg.

Recalling that RIA is undertaken less systematically for subordinate regulations than it is for primary laws, it is perhaps to be expected that the consideration of various policy options is also less systematically undertaken for subordinate regulations compared with primary laws. Indeed, this is the case: for subordinate laws the preferred regulatory option is always identified and assessed in only half EU Member States (Figure 3.11). A similar story to that of primary laws is shown with the apparent lessening in considering the baseline options and regulatory and non-regulatory alternatives.

Figure 3.11. Consideration of various options in RIA for subordinate regulations



Note: Data is based on 28 EU Member States.
Source: Indicators of Regulatory Policy and Governance Survey 2017, http://oe.cd/ireg.

Types of impacts assessed

A well-designed RIA can assist in promoting policy coherence by making transparent the inherent trade-offs in regulatory proposals, identifying likely beneficiaries from distributional effects of regulation as well as those that will bear the costs, and how risk reduction in one area may create risks for other areas of government policy. A comprehensive RIA incorporates an assessment of the economic, social and environmental impacts. RIA can improve the evidence base in policy making, identify an appropriate response to an identified problem, and reduce the incidence of regulatory failure arising from regulating when there is no case for doing so, or failing to regulate when there is a clear need.

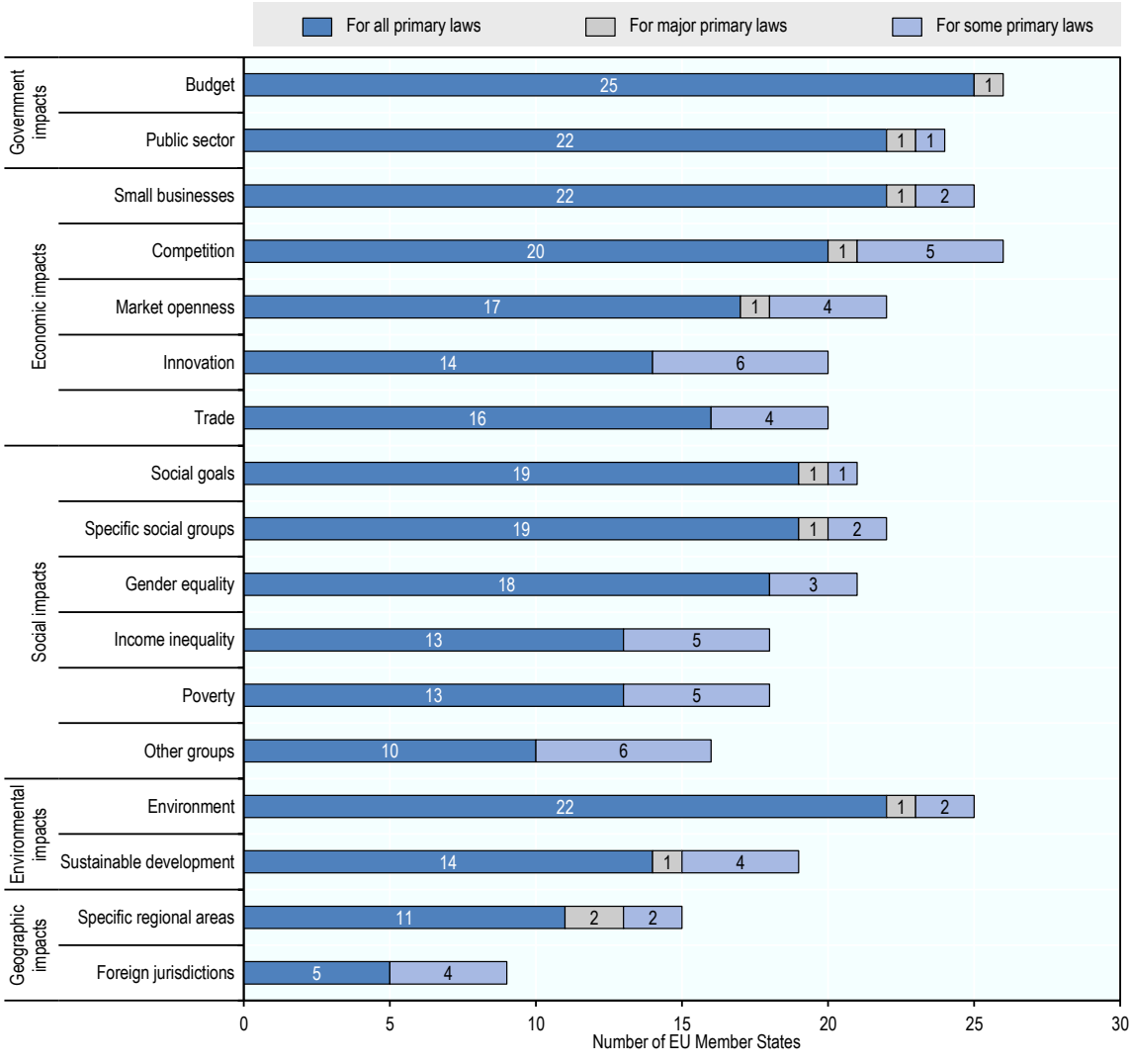
The *Annex to the OECD recommendation* relevantly provides that "When regulatory proposals would have significant impacts, *ex ante* assessment of costs, benefits and risks should be quantitative whenever possible. Regulatory costs include direct costs

(administrative, financial and capital costs) as well as indirect costs (opportunity costs) whether borne by businesses, citizens or government. *Ex ante* assessments should, where relevant, provide qualitative descriptions of those impacts that are difficult or impossible to quantify, such as equity, fairness, and distributional effects" (OECD, 2012[1]).

The European Commission requires RIAs to assess a broad range of economic, environmental, and social impacts. In addition though it also requires policy makers to consider issues relating to compliance and enforcement, distributional impacts, as well as identifying a process by which the law's goals will be assessed.

EU Member States generally assess a wide range of impacts relating to regulatory proposals on primary laws, albeit with differing frequency (Figure 3.12). Impacts to government, competition, small business, and the environment are most prevalent across EU Member States. A number of social impacts such as income inequality and poverty are always assessed by half of the EU Member States. Specific regional impacts and impacts on foreign jurisdictions are least likely to be assessed in RIA.

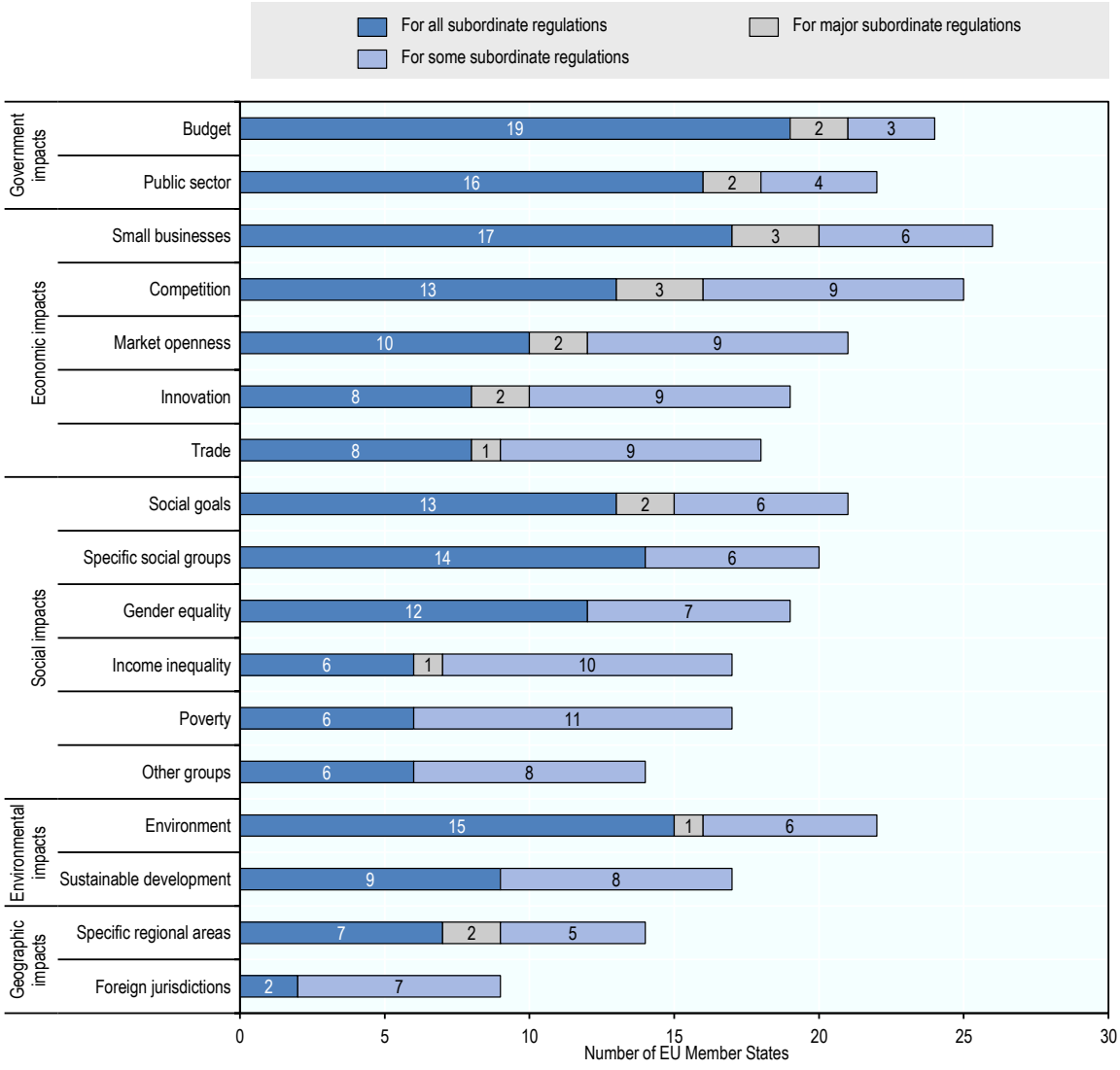
Figure 3.12. Types of impacts assessed in relation to primary laws



Note: Data is based on 28 EU Member States.
Source: Indicators of Regulatory Policy and Governance Survey 2017, http://oe.cd/ireg.

Requirements to assess government and environmental impacts are less systematic for regulatory proposals relating to subordinate regulations than they are for primary laws. RIAs are most likely to require an assessment small business and competition impacts (Figure 3.13), and a number of Member States have instituted explicit SME tests. For instance, in Spain, policy makers are required to carry out an SME test in accordance with the practices of the European Commission by virtue of the operation of Article 2 of Royal Decree 931/2017, which regulates the content of RIAs in Spain. In Finland, policy makers are required to identify and assess regulatory proposals' impacts on small and medium-sized businesses. In addition however, they also need to identify and assess how the proposal affects entrepreneurship by increasing barriers to entry, as well as the impact on 'growth entrepreneurship' where such businesses play a major role in the creation of new jobs and in increasing productivity (Ministry of Justice (Finland), 2008[12]).

Figure 3.13. Types of impacts assessed in relation to subordinate regulations



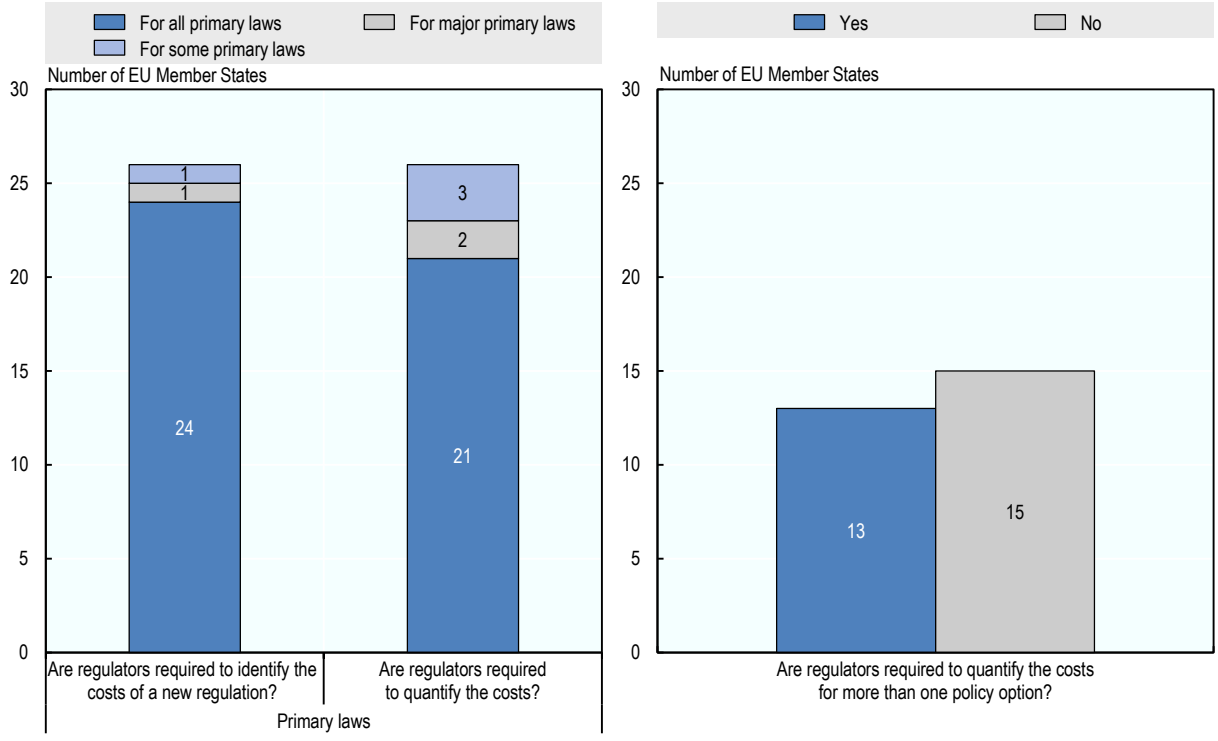
Note: Data is based on 28 EU Member States.
Source: Indicators of Regulatory Policy and Governance Survey 2017, http://oe.cd/ireg.

Assessment of costs

A central part of sound impact assessment is to identify and assess the expected costs and benefits that regulatory proposals will have on various economic actors. The *Annex to the OECD recommendation* provides that member countries should "Assess economic, social and environmental impacts (where possible in quantitative and monetised terms), taking into account possible long term and spatial effects" and "Evaluate the impact on small to medium-sized enterprises and demonstrate how administrative and compliance costs are minimised" (OECD, 2012[1]).

Across EU Member States, costs are more likely to be systematically identified rather than systematically quantified in relation to primary laws, and generally Member States are required to quantify costs wherever possible (Figure 3.14).

Figure 3.14. Requirements to identify and quantify costs of primary laws



Note: Data is based on 28 EU Member States.
Source: Indicators of Regulatory Policy and Governance Survey 2017, http://oe.cd/ireg.

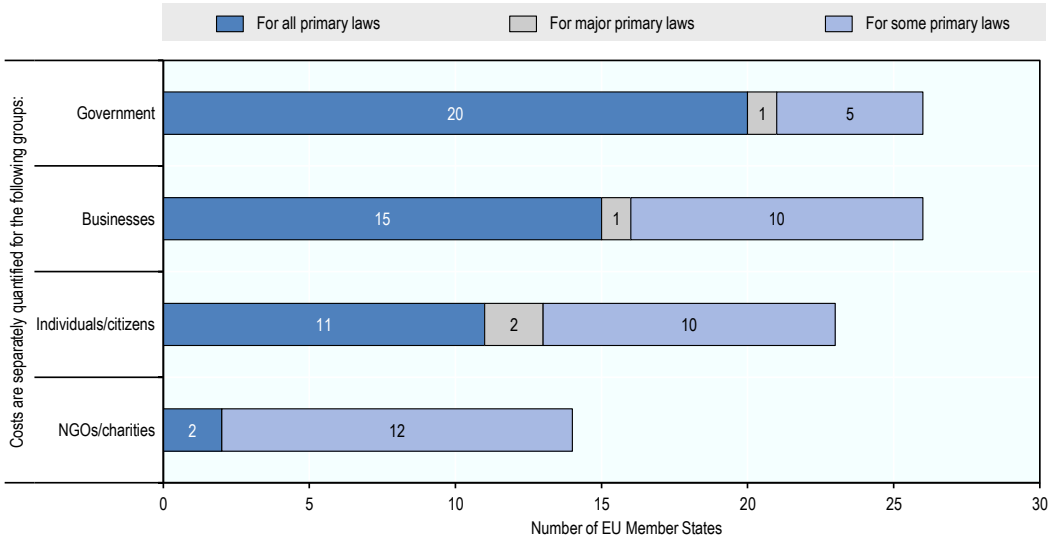
As part of considering various alternative options, EU Member States were asked to provide information about whether those options are ever quantified in practice. Around half of the EU Member States have requirements to quantify the costs of more than one policy option (Figure 3.14).

With regards to subordinate regulations, EU Member States are less likely to systematically identify and quantify the costs of regulatory proposals compared with those for primary laws.

Where costs are quantified they would therefore generally relate to the preferred regulatory option and not include other regulatory or non-regulatory alternatives. The main costs that are quantified in RIA relate to the costs to government, followed by costs to business, for regulatory proposals relating to primary laws (Figure 3.15). EU Member

States do not currently systematically quantify the costs of regulatory proposals in relation to individuals or non-government organisations (NGOs).

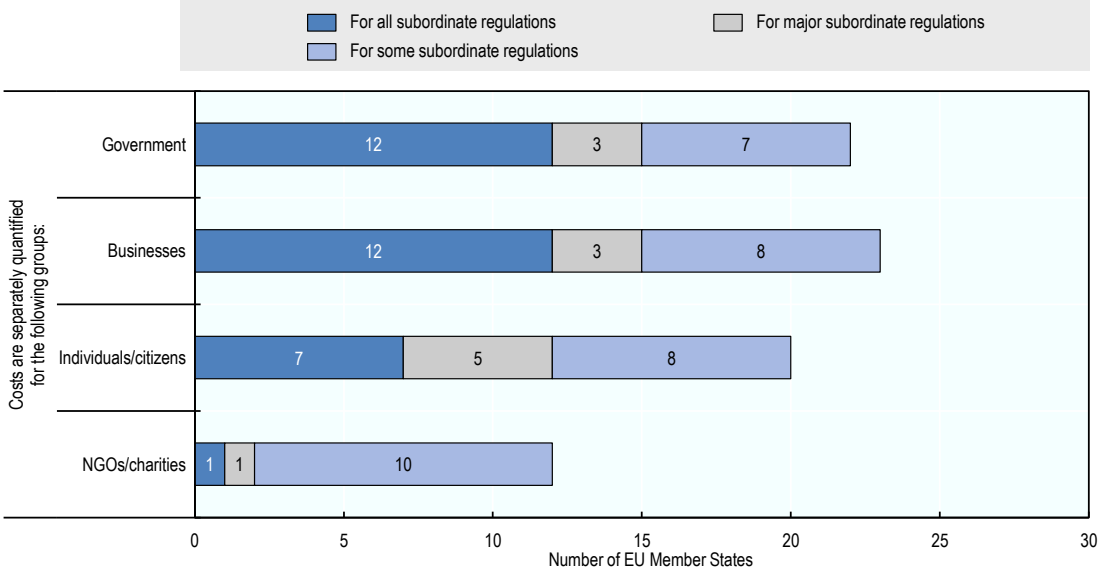
Figure 3.15. Quantification of costs for primary laws



Note: Data is based on 28 EU Member States.
Source: Indicators of Regulatory Policy and Governance Survey 2017, http://oe.cd/ireg

The quantification of costs to government, businesses, and individuals are undertaken sporadically across EU Member States in relation to regulatory proposals on subordinate regulations (Figure 3.16). Overall, costs imposed on NGOs are unlikely to be quantified by EU Member States.

Figure 3.16. Quantification of costs for subordinate regulations



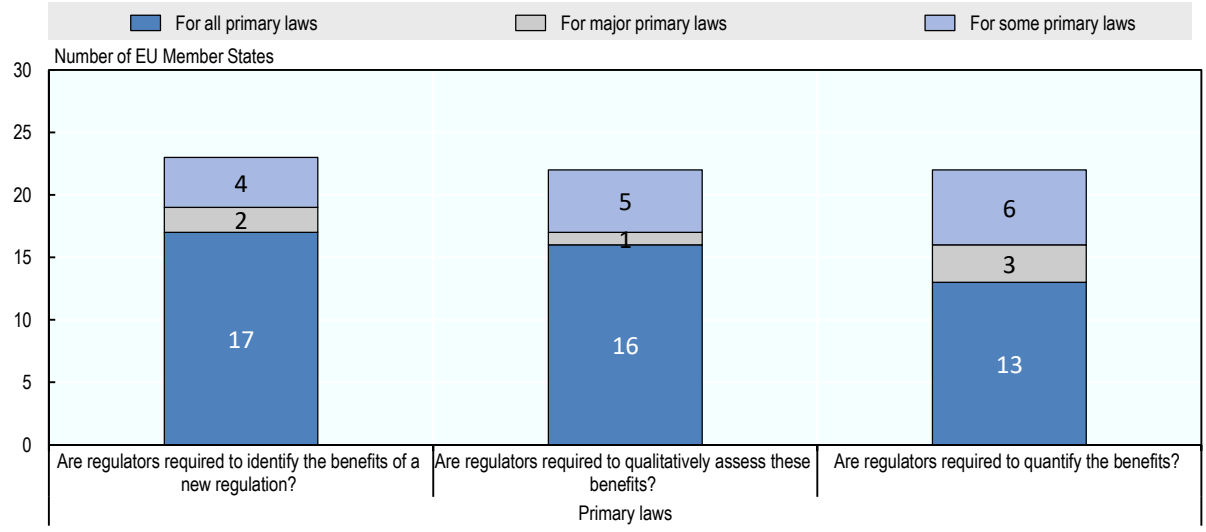
Note: Data is based on 28 EU Member States.
Source: Indicators of Regulatory Policy and Governance Survey 2017, http://oe.cd/ireg.

Assessment of benefits

Identifying the benefits of regulation is an important aspect of any sound impact assessment. It helps to explain to affected businesses and society more generally about why the regulation is required, as well as who stands to gain from it. It is more difficult for decision makers to provide informed decisions where benefits are not clearly identified as the expected impacts have not been completely assessed. Moreover, at a time of general distrust of governments, it is important that regulatory decisions are, and are seen to be, based on actual evidence (OECD, 2018[13]). When well-founded, regulations do provide benefits to society and these benefits ought to be an important aspect of RIA where policy makers can become better informed about both their magnitude and distribution. It also presents an opportunity for affected businesses and citizens to provide input into the expected benefits of regulation so as to better gain trust in the regulation-making process, as well as improve behaviour and compliance rates, potentially lowering costs to both government and businesses (OECD, 2018[14]).

Despite its importance, benefits are only required to be systematically identified in two-thirds of EU Member States (Figure 3.17). Where benefits are required to be identified, they are generally qualitatively assessed rather than quantified.

Figure 3.17. Identification and assessment of benefits for primary laws



Note: Data is based on 28 EU Member States.
Source: Indicators of Regulatory Policy and Governance Survey 2017, http://oe.cd/ireg.

Half of the EU Member States have a requirement to identify the benefits of new subordinate regulations, and less than two-thirds have any sort of quantification requirement (Figure 3.18).

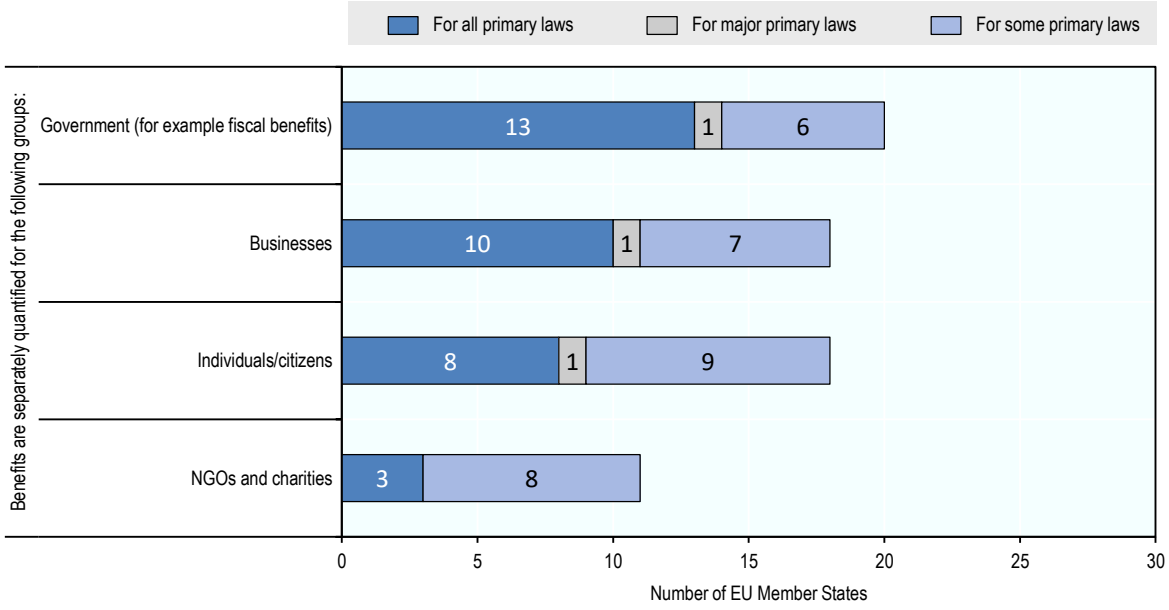
Figure 3.18. Identification and assessment of benefits for subordinate regulations

Note: Data is based on 28 EU Member States.
Source: Indicators of Regulatory Policy and Governance Survey 2017, http://oe.cd/ireg.

Where benefits are quantified, the results of the iREG survey and its extension to all EU Member States indicates that there are currently 11 EU Member States where policy makers are required to systematically quantify the benefits of more than one option.

The most common benefits to be quantified by EU Member States are those affecting government, followed by businesses and individuals (Figure 3.19). That said, the systematic assessment of these benefits is still not commonplace.

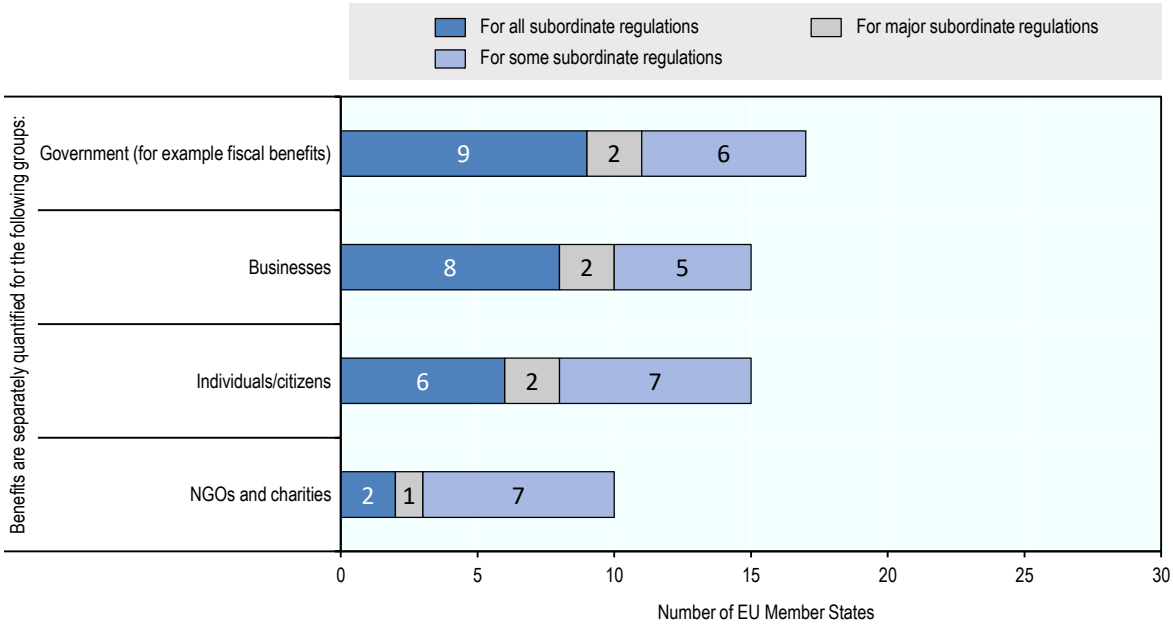
Figure 3.19. Quantification of benefits for primary laws



Note: Data is based on 28 EU Member States.
Source: Indicators of Regulatory Policy and Governance Survey 2017, http://oe.cd/ireg.

For regulatory proposals in relation to subordinate regulations, quantification of benefits is the exception rather than the rule. Less than one-third of EU Member States always quantify benefits to government, and quantification in other areas is less frequent than that (Figure 3.20).

Figure 3.20. Quantification of benefits for subordinate regulations



Note: Data is based on 28 EU Member States.
Source: Indicators of Regulatory Policy and Governance Survey 2017, http://oe.cd/ireg.

Consideration of costs and benefits in RIA

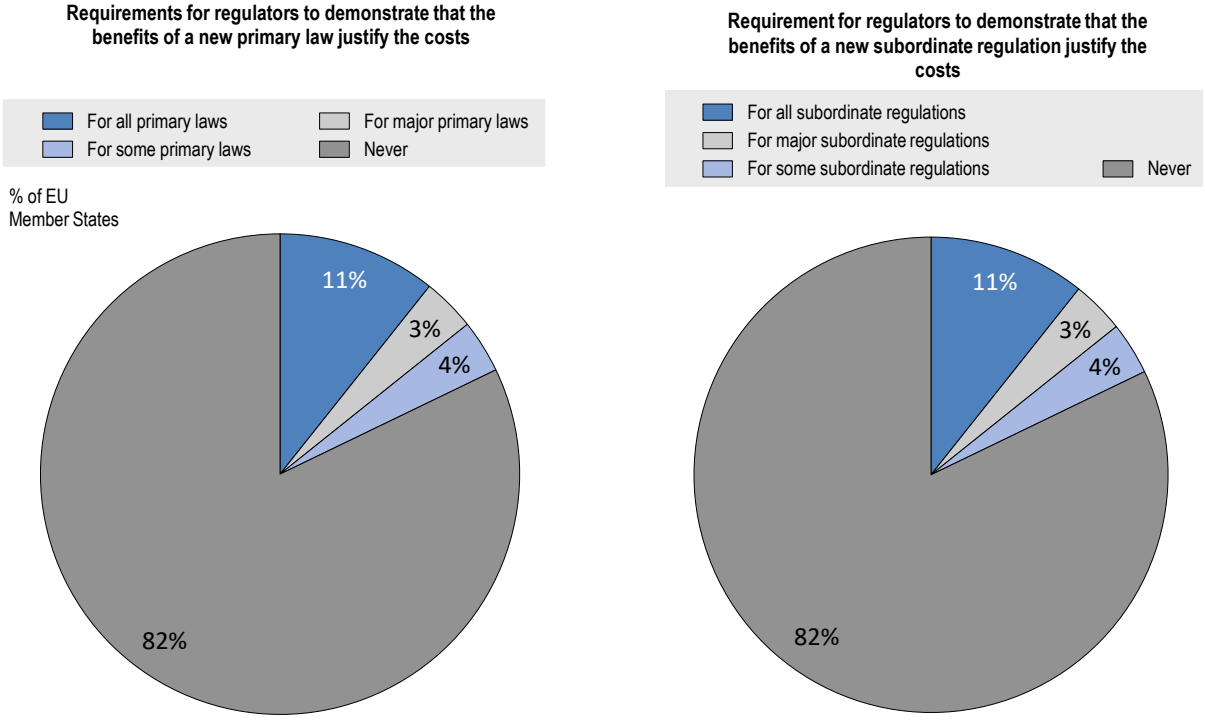
As the previous sections have illustrated, EU Member States tend to only thoroughly identify and assess the costs and benefits associated with the preferred regulatory option. It is much less commonplace that alternative regulatory and non-regulatory options are quantified, and even more so in relation to subordinate regulations.

A related issue is whether policy makers are required to show that the benefits of regulation outweigh their cost. This is an important aspect of any good RIA system as it helps to illustrate to the regulated community the expected benefits of the regulation, as well as providing information on who are likely to gain from it. Moreover, providing information that regulations are net beneficial helps to ensure that regulations are expected to enhance societal welfare. This helps to generate support for regulations from regulated entities and the broader community. Where the benefits of regulation are not or cannot feasibly be assessed during regulatory development, it is important that these regulations are subject to *ex post* evaluation after an appropriate period to ensure that they have in fact improved welfare, as well as providing an opportunity more generally to ensure that they remain fit-for-purpose (OECD, Forthcoming[15]).

The vast majority of EU Member States do not have a requirement to demonstrate that the benefits of regulation justify their costs, for either the development of primary laws or subordinate regulations (Figure 3.21). Hungary, Spain, and the United Kingdom have

such a requirement for all regulatory proposals; Poland has a requirement in relation to major laws; and Lithuania has a requirement in relation to some laws. The European Union has such a requirement in relation to major laws.

Figure 3.21. Requirements to demonstrate that benefits justify the costs



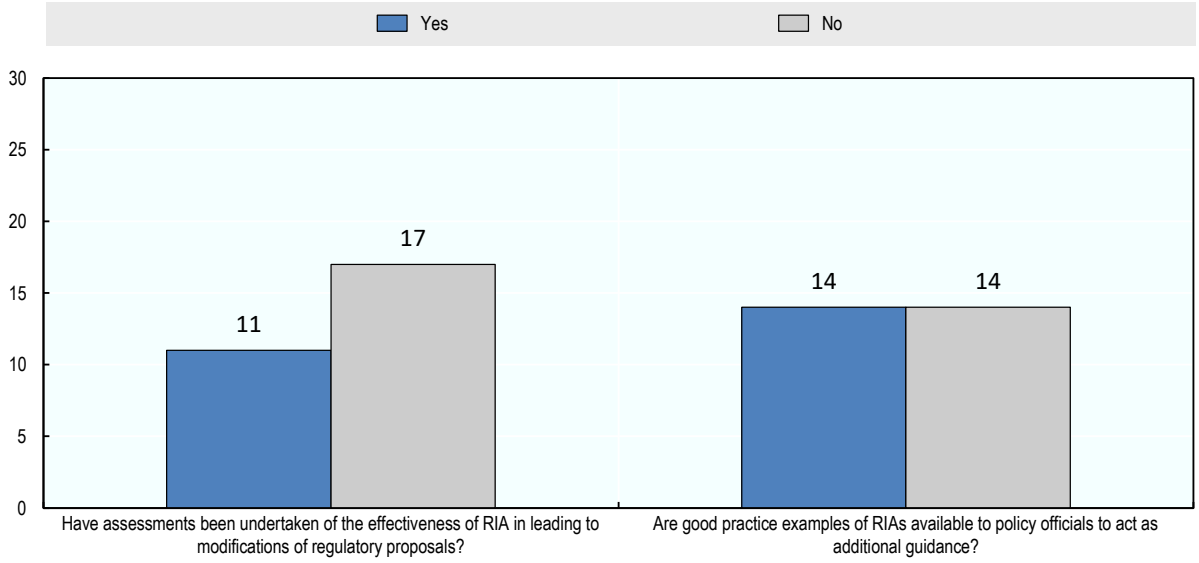
Note: Data is based on 28 EU Member States.
Source: Indicators of Regulatory Policy and Governance Survey 2017, http://oe.cd/ireg.

Effectiveness of RIA

In order to build support with the community, countries' RIA systems should be effective and efficient; focussing on regulatory proposals where the largest net benefits to society would come from subjecting them to impact assessment. Additionally, periodically assessing the effectiveness and efficiency of RIA systems helps to maintain political support for the process, as well as from within the civil service.

Previous OECD research found that there was a strong need to establish effective evaluations of 15 EU Member States' processes (OECD, 2009[11]). Assessments of the influence that RIA has had in successfully modifying regulatory proposals have been undertaken in more than one-third of EU Member States (Figure 3.22). In order to help maintain support for RIA — particularly from within the civil service — a number of EU Member States have produced good practice examples which act as additional guidance for policy makers when developing regulations.

Figure 3.22. Assessments of RIA modifying regulatory proposals and the existence of good regulatory practices



Note: Data is based on 28 EU Member States.
Source: Indicators of Regulatory Policy and Governance Survey 2017, http://oe.cd/ireg.

General regulatory oversight of EU Member States was discussed in Chapter 1. Some Member States have conducted evaluations of their RIA systems in practice. For instance, the members of RegWatchEurope (see Chapter 1) provide regular reports on the implementation of their RIA systems, as well as the RIA system overall (Box 3.3).

Box 3.3. Selected reports on the effectiveness of RIA by members of RegWatchEurope

The members of RegWatchEurope are the RIA oversight bodies from seven EU Member States: the Czech Republic, Finland, Germany, the Netherlands, Norway, Sweden, and the United Kingdom (see chapter 1). RegWatchEurope was formed to foster exchange and co-ordinate activities on regulatory oversight.

The members generally provide annual compliance reporting statistics on the quality of RIAs, as well as more qualitative information around matters such as impacts assessed. Some reports have also assessed the extent to which feedback to ministries has been taken into account in the final regulatory proposal.

Recent reporting by the Finnish oversight body noted that a number of shortcomings in RIAs could have been overcome via better adherence to the impact assessment guidelines. It did note however that some individual RIAs had undertaken sound impact assessment.

Source: Finnish Council of Regulatory Impact Analysis, *Annual Review 2016*, https://vnk.fi/documents/10616/1851227/Finnish+Council+of+Regulatory+Impact+Analysis+Annual+Review+2016/c367fbba-c0f3-4b6d-abe5-81ead1227046 (accessed September 2018).

Separately to those countries, Belgium has released a series of reports on the implementation of RIA. Its most recent report noted that RIA is not yet well integrated into Belgian policy making, and occurs too late in the policy development process. Although the review identified that the quality of RIAs was not satisfactory, it did recognise that there were some good examples that were explicitly highlighted for other ministries to follow (Comité d'analyse d'impact, 2016[16]).

A review of the Romanian RIA system found that there were a number of challenges in the full adoption of an effective RIA system including a bias towards regulatory options, and a lack of skills across the administration to apply analytical RIA steps in practice. It was identified however that RIA has been promoted throughout the administration and that the importance of evidence-based decision making was recognised (World Bank, 2014[17]).

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Chapter 4. *Ex post* review of laws and regulations across the European Union

Only after laws have entered into force can governments assess their full effects and their impacts on the society. Many of the features of an economy or society of relevance to particular regulations will change over time, so even regulations that are fit for purpose may become outdated over time. To ensure that regulations remain appropriate, countries should regularly review their stock of existing regulations. Ex post *evaluation of regulations however remains relatively undeveloped among OECD members and many EU countries. This chapter assesses the use of ex post evaluations across all EU Member States and the European Union. It discusses how EU countries use different approaches to* ex post *evaluation as well as whether EU Member States have a sound methodology for* ex post *evaluation in place. It concludes by providing information on the entities that typically prepare ex post evaluations, as well as how stakeholders can be involved.*

Note by Turkey:
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. Turkey recognises the Turkish Republic of Northern Cyprus (TRNC). Until a lasting and equitable solution is found within the context of the United Nations, Turkey 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 Turkey. The information in this document relates to the area under the effective control of the Government of the Republic of Cyprus.

Introduction

The stock of laws and regulations has grown rapidly in most countries. However not all regulations will have been rigorously assessed, and even where they have, not all effects can be known with certainty in advance. Moreover, many of the features of an economy or society of relevance to particular regulations will change over time. 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[1]).

The *2012 OECD Recommendation on Regulatory Policy and Governance* therefore 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[2]).

Ex post assessments of regulatory performance should have 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. Reviews that in additional also encompass proposals for change and revisit the original regulatory objective and its ongoing appropriateness or legitimacy are particularly useful to improve the stock of regulations (OECD, Forthcoming[3]).

This chapter presents a systematic and up-to-date assessment of requirements and practices in place for conducting *ex post* assessments for primary laws and subordinate regulation across all 28 EU Member States and the European Commission. The section below summarises the key findings. The second section provides a snapshot of country's systems based on the iREG composite indicator on *ex post* evaluation. The third section discusses the use of different approaches to *ex post* evaluation including programmed reviews, *ad hoc* reviews and stock management approaches by EU Member States. The section on methodology of *ex post* evaluation looks at whether key elements of a sound methodology for *ex post* evaluation are in place in Member States. Finally, the section on conducting *ex post* evaluation in practice provides practical information on who typically prepares *ex post* evaluations and is involved in the process. The section on effectiveness of *ex post* evaluation gives an overview of evaluations conducted on whether *ex post* evaluation systems function well in practice.

Key findings

The majority of EU Member States lacks a systematic approach towards conducting *ex post* evaluation of individual regulations: Less than one fifth of Member States systematically assess whether laws and regulations achieve their policy goals as expected. When policy makers are required to identify actual costs and benefits, this usually applies only to some evaluations in selected policy areas.

Only the United Kingdom systematically compares the effects of existing regulations to alternative options. This indicates that Member States do not consider *ex post* evaluation as an opportunity to look beyond the effects of the chosen regulatory option and revisit whether other options might be more effective or efficient in achieving regulatory goals.

Over the last decades, efforts to review the stock of existing regulations have been largely driven by the motivation to reduce regulatory burden. This focus has largely remained in the centre of *ex post* review approaches. While almost all Member States have conducted reviews focusing on administrative burdens, only a quarter of EU Member States made use of in-depth reviews to assess a wider range of impacts and the cumulative effect of regulations in a particular policy area to inform more far-reaching reforms.

The European Commission employs a range of review approaches, combining systematic evaluations of individual regulations with in-depth reviews of specific policy sectors. Through the "evaluate first" principle, the Commission has committed to evaluate all regulations before making a new proposal in a related area. Since the 2015 Better Regulation Package, major *ex post* evaluations and reviews are subject to quality control by the Regulatory Scrutiny Board, contributing to strengthened oversight of *ex post* evaluations.

While almost all EU Member States provide guidance on *ex ante* assessments, only half do so for *ex post* evaluation. Yet, a sound methodological framework is an integral part of a functioning *ex post* evaluation system to ensure that *ex post* evaluations meet their purpose and are of sufficient quality to inform reforms.

In the majority of EU Member States, *ex post* evaluations are conducted by the department responsible for developing the regulation. Only in a small minority of EU countries, bodies and committees outside the government are responsible for conducting *ex post* evaluations. External or independent review processes might however, be particularly useful the more 'sensitive' a regulation is and the more significant its economic or social impacts.

EU Member States generally value the input of stakeholders to review the impact of existing regulation: three quarters of EU Member States have ongoing mechanisms in place by which the public can provide recommendations to modify regulations and engage stakeholder when conducting *ex post* evaluation. In most countries however this is only possible for selected policy areas. Additionally, EU countries could more frequently publish *ex post* evaluation reports online to ensure the transparency of the results of evaluation activities: this is currently only done by less than half of all Member States.

Assessments of the effectiveness of *ex post* evaluations systems have been undertaken in only five EU Member States. Where such reviews have been conducted, they provided valuable insights how existing *ex post* evaluation systems in EU Member States can be improved. EU Member States would benefit from reviewing evaluation practices in their jurisdiction to address the existing deficiencies.

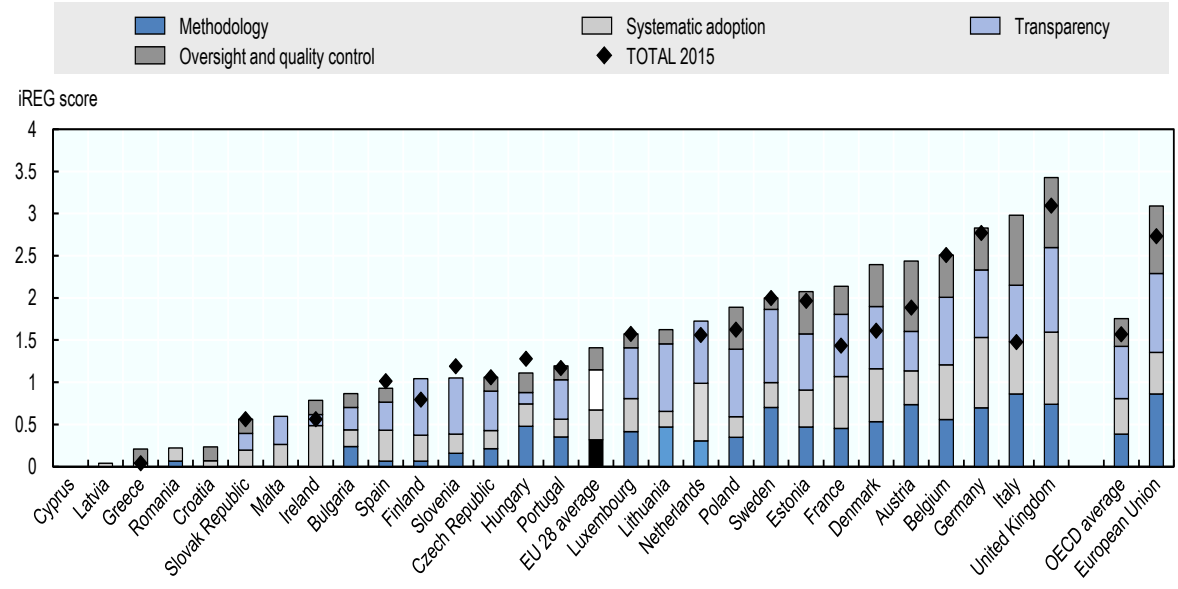
General trends across the EU

A review of a number of EU Member States almost ten years ago found that many Member States have invested in initiatives targeting the reduction of regulatory burden and a simplification of the stock of existing regulations. However, *ex post* evaluation of the effectiveness and efficiency of individual regulations tends to be *ad hoc* and approaches often remain unsystematic (OECD, 2010[4]). These findings are still valid today.

Despite the high potential benefits in reforming the stock of regulations, in 2018, *ex post* evaluation is still an underdeveloped practice in most EU Member States (Figure 4.1) and far less common than *ex ante* assessment: This generally mirrors the state of *ex post*

evaluation across the OECD (OECD, 2018[5]). However, EU Member States show an even weaker level of integration of *ex post* evaluation into their regulatory management systems than OECD countries in general. Compared to *ex ante* evaluation, there is generally more variation across EU Member States. Countries such as Croatia, Cyprus, Greece, Latvia and Romania have not yet developed systematic approaches towards *ex post* evaluations. On the other hand, there are also a few countries where *ex post* evaluations are systematically conducted, such as Germany and the United Kingdom. Italy recently strengthened its *ex post* evaluation system by introducing a new set of procedures for *ex post* evaluation and reforming its institutional settings. However, the majority of EU Member States has integrated some aspects of *ex post* evaluation into their regulatory management system, but either lacks a systematic adoption or a sound methodological framework for conducting *ex post* evaluation. Assessments often only focus on administrative burdens and not on whether laws and regulations have achieved their objectives.

Figure 4.1. Composite indicators: *Ex post* evaluation of primary laws, 2018

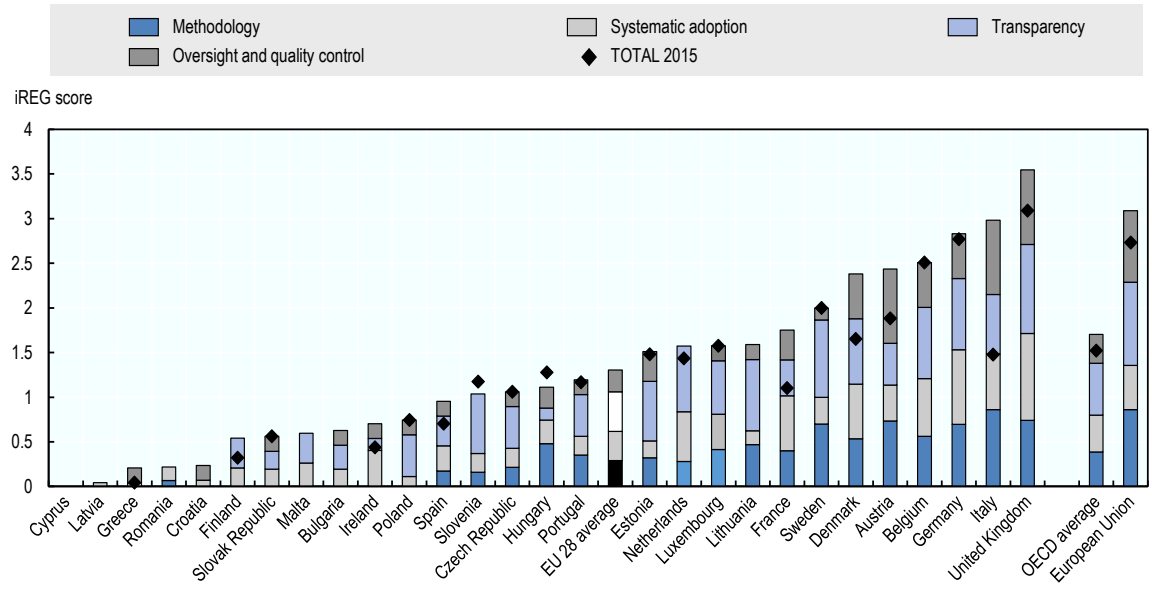


Notes: Data for 2015 is based on the 34 countries that were OECD members in 2014 and the European Union, which included 21 of the current 28 EU Member States. The OECD average is based on the 34 member countries at the time of the survey. Data for 2018 includes the remaining EU Member States of Bulgaria, Croatia, Cyprus, Malta and Romania. The more regulatory practices as advocated in the 2012 Recommendation a country has implemented, the higher its iREG score.
Source: Indicators of Regulatory Policy and Governance Surveys 2014 and 2017, http://oe.cd/ireg.

Requirements and practices relating to subordinate regulations are generally slightly less frequently in place than those relating to primary laws (Figure 4.2). However, differences are overall not as substantial as for example in the area of *ex ante* impact assessment. This indicates that where pronounced systems for *ex post* evaluation are in place, these would largely also apply to subordinate regulations. EU Member States in which particular differences between requirements and practices regarding primary laws and those regarding subordinate regulation exist include Estonia, Finland and Poland. Overall, *ex post* evaluation systems are less pronounced in "newer" EU Member States. Out of

13 Member States that joined the EU since its enlargement in 2004, only Estonia, Poland (for primary laws) and Lithuania have an *ex post* evaluation system in place on a level higher than the EU Member State average. However, also a number of EU countries with longer membership still do not systematically conducting *ex post* evaluation.

Figure 4.2. Composite indicators: *Ex post* evaluation of subordinate regulations, 2018



Notes: Data for 2015 is based on the 34 countries that were OECD members in 2014 and the European Union, which included 21 of the current 28 EU Member States. The OECD average is based on the 34 member countries at the time of the survey. Data for 2018 includes the remaining EU Member States of Bulgaria, Croatia, Cyprus, Malta and Romania. The more regulatory practices as advocated in the 2012 Recommendation a country has implemented, the higher its iREG score.
Source: Indicators of Regulatory Policy and Governance Surveys 2014 and 2017, http://oe.cd/ireg.

The European Commission has a more advanced system for reviewing existing regulation in place, compared to most of the EU Member States. Evaluations of individual regulations, including programmed and *ad hoc* evaluations, are complemented by reviews of multiple regulations. With regards to the latter, the Commission conducts so-called "fitness checks" to assess the performance of a group of interlinked regulations to identify gaps, overlaps, inconsistencies, administrative burden and cumulative impacts in particular regulatory areas. These approaches are underpinned by a relatively developed methodology and mandatory stakeholder engagement for conducting *ex post* evaluation. Additionally, the European Commission established the Regulatory Fitness and Performance programme (REFIT) in 2012, which aimed at making EU-laws simpler, and at reducing regulatory costs. Recently, the European Commission also strengthened oversight and quality control of *ex post* evaluation: Since 2015, the Regulatory Scrutiny Board has been responsible for reviewing and providing opinions on the quality of *ex post* evaluations of major regulations (European Commission, 2015[6]).

The systematic adoption of *ex post* evaluation as a regulatory management tool generally shows a lot of variation across EU Member States. This reflects the fact that relatively few EU Member States have adopted requirements to systematically conduct periodic *ex post* evaluations (see section Approaches to *ex post* evaluation). Similarly, most EU

Member States have yet to establish a sound methodology for *ex post* evaluation, including provisions for cost-benefit analysis and the achievement of goals (see section Methodology of *ex post* evaluation). By contrast, most EU Member States already have specific mechanisms in place to gather recommendations from stakeholders to modify existing regulations as well as to involve stakeholder when conducting evaluations. In most EU countries, stakeholder engagement during *ex post* evaluations is however only possible for selected policy areas (see section Conducting *ex post* evaluation in practice – the organisational context). Mirroring the findings in the other areas examined in this survey, *oversight and quality control* of *ex post* evaluations is generally the weakest dimension across EU Member States (see Chapter 1).

Approaches to *ex post* evaluation in the EU and EU Member States

A "portfolio" of approaches to the *ex post* review of regulation will generally be needed. In broad terms, such approaches range from programmed reviews, to reviews initiated on an *ad hoc* basis, or as part of ongoing 'management' processes (see Box 4.1). *Reviews* can be thought of as conceptually broader than *evaluations*, as they generally encompass proposals for change and may need to revisit the original regulatory objective and its ongoing appropriateness or legitimacy. For example, an evaluation of a regulation intended to restrict competition may find that it had achieved its goal, but the approach itself may no longer be accepted as being in the public interest. In other words, while reviews will need to call on evaluation techniques, they have a broader role to play.

Box 4.1. Various approaches and methodologies to regulatory reviews

The approaches employed for reviews of regulations, like regulations themselves, need to be fit for purpose. The broad approaches to review are generally classified according to different points in time; whereas the various tools or methodologies employed, whilst individually distinct, may share some characteristics both within and across review approaches.

Programmed reviews – tend to focus on the performance of regulations at a specific point in time, or when a clearly defined situation arises:

- For regulations or laws with potentially important impacts on society or the economy, particularly those containing innovative features or where their effectiveness is uncertain, it is desirable to *embed review requirements* in the legislative/regulatory framework itself.
- *Sunset requirements* provide a useful 'failsafe' mechanism to ensure the entire stock of subordinate regulation remains fit for purpose over time.
- *Post-implementation reviews* within a shorter timeframe (e.g. 1-2 years) are relevant to situations in which an *ex ante* regulatory assessment was deemed inadequate (by an oversight body for example), or a regulation was introduced despite known deficiencies or downside risks.

Ad hoc reviews – tend to take place as the need arises:

- Public *stocktakes* of regulation provide a periodic opportunity to identify current problem areas in specific sectors or the economy as a whole.

- *Principle-based* reviews can employ a screening criterion or principle to allow a specific focus on certain performance issues or impacts of concern.
- *In depth public reviews* are appropriate for major regulatory regimes that involve significant complexities or interactions, or that are highly contentious, or both.
- Cross-jurisdictional reviews of regulation can be a useful mechanism for identifying improvements based on comparisons of jurisdictions that have similar policy frameworks and objectives.

Ongoing stock management – do not tend to take place at a specified point in time, and are part of general regulatory 'housekeeping':

- There need to be mechanisms in place that enable 'on the ground' learnings within enforcement bodies about a regulation's performance to be conveyed as a matter of course to areas of government with policy responsibility.
- Regulatory offset rules (such as one-in one-out) and burden reduction targets or quotas need to include a requirement that regulations slated for removal if still 'active', first undergo some form of assessment as to their worth.
- Review methods should themselves be reviewed periodically to ensure that they too remain fit for purpose.

Source: OECD (Forthcoming), Best Practice Principles for Regulatory Policy: Reviewing the Stock of Regulation, OECD Publishing, Paris.

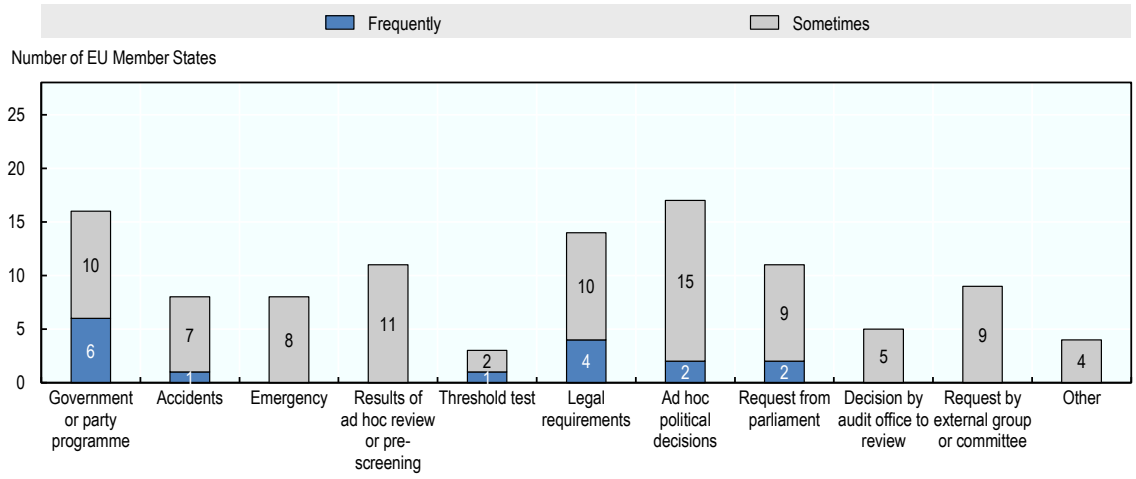
The timing, scope, and review methodologies of the three approaches will likely change across review types, as well as within them. Such a tailored approach helps to ensure that affected parties have adequate opportunity to provide input, and so as to ensure that review resources are appropriately targeted to policy areas with the largest societal impacts. For example, under programmed reviews, embedded reviews tend to be selective and focus on policy areas with large or uncertain impacts—whereas sunsetting is generally a process that ensures holistic review of all regulations, irrespective of the magnitude of impacts.

Given the different focusses of these reviews, it may also be the case that they adopt different review methodologies. For instance, a law may include an embedded review requirement, but could potentially at any time be subject to an ad hoc review. As a result, a certain amount of overlap may be present between the types of reviews, their timing and scope, and the methodologies selected.

Programmed reviews and review requirements

Only five EU Member States as well as the European Commission have reported to have frequently conducted *ex post* evaluation in the past three years. *Ex post* evaluation in EU Member States are often triggered on an ad hoc basis and often result out of political considerations (Figure 4.3).

Figure 4.3. Triggers of *ex post* evaluation of primary laws in EU Member States

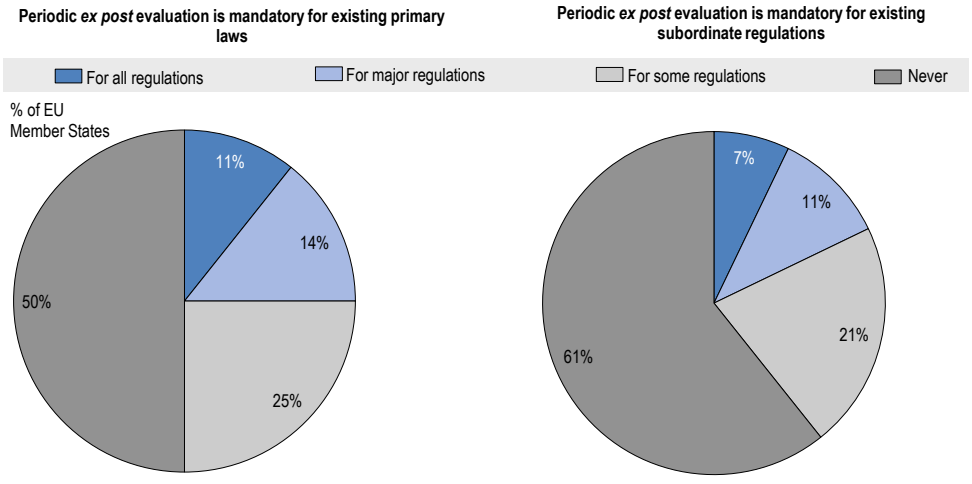


Note: Data is based on 28 EU Member States.
Source: Indicators of Regulatory Policy and Governance Survey 2017, http://oe.cd/ireg.

In order to achieve and sustain good regulatory outcomes over time, it is fundamental that regulatory policy systems explicitly incorporate provisions for *ex post* review along with *ex ante* assessment. Such requirements can in time also help to "foster a deeper 'culture of evaluation' within government, enhancing administrative capability and raising the standard of evaluations themselves" (OECD, Forthcoming[3]).

Out of 28 EU Member States, only 14 countries have provisions for mandatory periodic evaluation of existing primary laws in place, while 11 countries do so for subordinate regulations (Figure 4.4). This largely confirms the general picture across OECD members: only 26% systematically require periodic *ex post* evaluation for existing primary laws and 21% for subordinate regulations (OECD, 2018[5]). In most of the 14 EU countries, requirements only apply to primary laws in specific policy areas. Only Austria, Denmark, Germany, Hungary, Italy, the Netherlands and the United Kingdom have a requirement in place to conduct periodic *ex post* evaluation systematically across all policy areas.

Figure 4.4. Requirements to conduct periodic *ex post* evaluations



Note: Data is based on 28 EU Member States.
Source: Indicators of Regulatory Policy and Governance Surveys 2017, http://oe.cd/ireg.

The European Commission has committed itself to the "evaluate first" principle, requiring that in principle, all regulations should be evaluated before making a new proposal in a related area (Box 4.2).

Box 4.2. The European Commission's "evaluate first principle"

The European Commission is arguably one of the most vocal advocates of the new course given to *ex post* evaluation of regulation. It has introduced the so-called "evaluating first principle", according to which the Commission commits "(…) [not to] examine proposals in areas of existing legislation until the regulatory mapping and appropriate subsequent evaluation work has been conducted." (EC, 2012).

The commitment was announced in the Political Guidelines that President Barroso publicly issued in 2009, at the outset of his second term in office (Barroso, 2009) as well as in various public speeches. The commitment to the principle was renewed as part of the 2015 Better Regulation Package and readdressed in its recent 2017 Better Regulation Communication (EC, 2017).

The principle is expected to help the Commission, in the short to mid-term, to re-allocate the services' resources according to priority axes, raising at the same time the relative importance of *ex post* evaluation within the policy cycle. The evaluating first principle, if systematically applied, has clear repercussions on the re-organisation of the planning phase of evaluations.

Source: Allio, L. (2015), "*Ex post* evaluation of regulation: An overview of the notion and of international practices", in Regulatory Policy in Perspective: A Reader's Companion to the OECD Regulatory Policy Outlook 2015, OECD Publishing, Paris; European Commission (2012), *EU Regulatory Fitness*, COM(2012) 746 final of 12 December; Barroso, J.M. (2009), *Political Guidelines for the Next Commission*, http://ec.europa.eu/commission_2010-2014/president/pdf/press_20090903_en.pdf (accessed August 2018); European Commission (2017): Completing the Better Regulation Agenda: Better solutions for better results, COM(2017) 651 final, https://ec.europa.eu/info/sites/info/files/completing-the-better-regulation-agenda-better-solutions-for-better-results_en.pdf (accessed August 2018).

Embedding a review directly in the legislation through review or sunsetting clauses makes it more likely that a review will take place. This is the case in less than half of the EU Member States (Table 4.1). Where clauses are used, they do not necessarily cover the most significant regulations. In the United Kingdom, a statutory review is required for all subordinate regulations where those regulations affect either business or a voluntary or community body. The review report must set out the objectives to be achieved, assess the extent to which they have been achieved, and assess whether those objectives remain appropriate (Government of the United Kingdom, 2015[7]). With regards to EU-made laws, the 2016 Interinstitutional agreement between the European Parliament, the Council and the Commission further promoted the systematic inclusion of evaluation clauses into EU legislation (European Parliament, Council of the European Union, European Commission, 2016[8]).

Table 4.1. Review requirements in EU Member States and the European Union

For all regulations ■	For major regulations ◆	For some regulations ❍			
	Is periodic *ex post* evaluation of existing regulation mandatory?		Do regulations include 'sunsetting' clauses?		Do regulations include automatic evaluation requirements?	
	Primary laws	Subordinate regulation	Primary laws	Subordinate regulation	Primary laws	Subordinate regulation
Austria	◆	◆	❍	❍	◆	◆
Belgium	❍	❍	❍	❍	❍	❍
Bulgaria						
Croatia						
Cyprus						
Czech Republic			❍	❍		
Denmark	◆	❍	❍	❍	❍	❍
Estonia	❍	❍			❍	❍
Finland			❍			
France	❍	❍	❍	❍	❍	❍
Germany	◆	◆	❍	❍	◆	◆
Greece						
Hungary	■	■			■	■
Ireland						
Italy	◆	◆			❍	❍
Latvia						
Lithuania	❍		❍		❍	
Luxembourg			❍	❍		
Malta						
Netherlands	■	❍	❍		❍	
Poland	❍		❍		❍	
Portugal						
Romania						
Slovak Republic						
Slovenia	❍					
Spain	❍	❍				
Sweden			❍	❍		❍
United Kingdom	■	■	❍	■	◆	■
EU 28 total (all categories)	14	11	13	9	12	10
European Union	■	■	❍	❍	◆	◆

Source: Indicators of Regulatory Policy and Governance Survey 2017, http://oe.cd/ireg.

Similar to the *ex ante* assessment of regulations, a threshold with objective criteria to identify when and how to conduct *ex post* evaluation can help to channel resources effectively to the most significant regulations and improve transparency. Out of 28 EU Member States, only five currently rely on threshold tests (Table 4.2). The *OECD 2012 Recommendation* specifies in that regard that, "reviews should preferably be scheduled to assess all significant regulation systematically over time and priority should be given to identifying ineffective regulation and regulation with significant economic impacts on users and/or impact on risk management" (OECD, 2012[2]).

This implies that the threshold tests should cover a sufficiently large range of impacts and not be limited to direct costs to business or citizens as is the case in some Member States.

Table 4.2. Thresholds used for *ex post* evaluation in EU Member States

Country	Thresholds used for *ex post* evaluation
Austria	An *ex ante* threshold test determines whether a full or a simplified RIA has to be conducted during the development of a regulation. This threshold test is based on both quantitative and qualitative criteria such as financial impacts or a substantial link to measures in the performance orientated annual federal budget. Mandatory *ex post* evaluation is limited to those laws and regulations which were subject to full RIA, whereas simplified RIAs do not entail an evaluation.
Estonia	In cases where *ex ante* assessment has showed the occurrence of significant impacts (as understood in the Estonian legislative system) then *ex post* assessment is required by rule and the plan for conducting it must be presented in the explanatory letter of the draft law. If the line ministry is of the view that *ex post* evaluation is unnecessary, then the reasons for it have to be shown in the explanatory letter of the draft law.
Germany	Within the evaluation framework, proposals are deemed to be major if they give rise to regular compliance costs of more than one million euros a year for the citizens, businesses or the administration.
Spain	The Annual Regulatory Plan identifies which regulations must be submitted for evaluation according to the a number of criteria, including: a) Important budgetary cost or savings for the General State Administration b) Increase or reduction of administrative positions for the constituents of the regulation which may be significant due to the volume of the affected population or due to influencing important economic or social sectors c) Relevant influence on constitutional rights and freedoms d) Foreseeable conflicts with the Autonomous Communities e) Impact on the economy as a whole or on important sectors within the same. f) Significant effects on market unity, competition, competitiveness, or small and medium-sized companies g) Relevant impact on gender h) Relevant impact on childhood and adolescence or on the family
United Kingdom	Regulations with an impact on business of more than GBP 1 m per year (as assessed in the RIA) should in all but exceptional cases contain a statutory review clause.

Source: Indicators of Regulatory Policy and Governance Survey 2017, http://oe.cd/ireg.

Ad hoc reviews of the stock of regulations

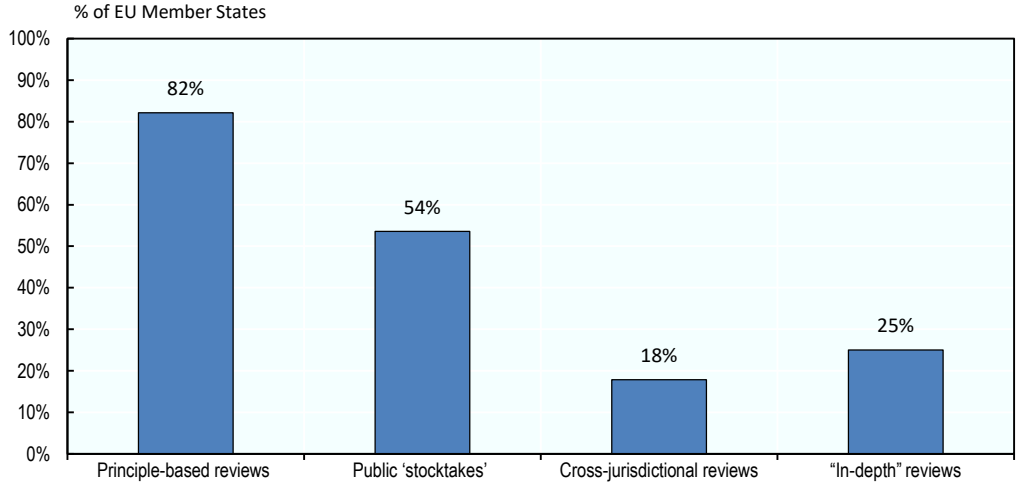
Broader reviews of the stock of regulations in specific sectors or the economy as a whole provide an opportunity to identify areas for improvement, review policy objectives concerning a specific policy area or assess the cumulative impact and interactions between multiple regulations. The vast majority of Member States have undertaken one or more so-called principle-based reviews, focussing on a specific type of impact. More in-depth reviews focussing on a larger set of impacts and the complexities of interactions in a specific policy area are much less common despite their high potential benefits for structural reform. Less than one fifth of countries have undertaken a cross-jurisdictional review identifying improvements based on comparisons with jurisdictions having similar policy objectives (Figure 4.5).

Principle-based reviews in EU Member States over the last decade have mostly focused on identifying administrative burden to determine which regulations in specific sectors, policy areas or the economy as a whole warrant review or potential reform. Half of EU Member States have also reviewed impediments to competition in specific sectors or the economy as a whole. Principle-based reviews using other screening criteria such as compliance costs, compliance with international instruments or risk are less commonly conducted.

When it comes to major areas of regulation with wide-ranging effects, where gains from a reform are likely to be significant, more in-depth reviews are useful to achieve a full understanding of the regulatory issues and developing options for reform (OECD, Forthcoming[3]). These reviews remain scarce among EU Member States. Among OECD members, in-depth reviews are more prevalent: around 40% of OECD countries have

conducted in-depth reviews, with an increasing number in recent years (OECD, 2018[5]). The French Court of Auditors for example conducted an in-depth review on policies and regulations concerning social housing access for disadvantaged people. Investigating six diverse local districts, it concluded in 2017 that the current policy was overly focused on new constructions. As a result, the government launched a housing plan in September 2017 emphasising mobility and transparency besides the construction of new social housing (Cour des Comptes, 2017[9]). The European Commission had established the concept of 'fitness checks' to evaluate specific regulatory areas more in-depth. Fitness checks have been scaled up following the launch of the REFIT programme in 2012, which is aimed at assessing administrative burden in the EU (OECD, 2015[10]). In recent years, the Commission has conducted a number of fitness checks evaluating the regulatory framework covering specific sectors or policy areas, such as for consumer law.

Figure 4.5. Ad hoc reviews of the stock of regulation/legislation conducted in the last 12 years



Note: Data is based on 28 EU Member States
Source: Indicators of Regulatory Policy and Governance Survey 2017, http://oe.cd/ireg.

Considering that all EU Member States are exposed to the same EU *acquis communautaire* and consequently share a considerable amount of content of regulations and political objectives as defined in the EU treaties, reviews based on comparisons across countries or regions can be particularly useful in the EU context. However, only a small minority of countries conducted reviews of this kind in the last 12 years. Conducting cross-jurisdictional reviews more frequently could help countries to identify opportunities for improvement in specific areas, address inconsistencies between jurisdictions and identify gold plating in the implementation of EU-law (see Box 4.3)

Box 4.3. Comparing regulatory processes and outcomes across EU Member States

In **Denmark**, the EU Implementation Council can initiate so-called "neighbour checks", i.e. reviews of methods used to implement EU legislation in other Member States with the aim to identify best practices (see Chapter 1, Box 1.2). In 2016, the Danish Ministry of Energy, Utilities and Climate compared the transposition of the Energy Efficiency Directive in Denmark with the implementation in Sweden, Finland, Germany and the United Kingdom. The report identified, inter alia, inconsistencies with regards to the definition of large enterprises subject to mandatory energy audits, which have been subsequently clarified by the European Commission.

In 2013, the **Netherlands** carried out a comparative study comparing regulatory burden to SME's in the bakery sector across selected EU Member States. The evaluation compared the impact of the regulatory frameworks in the Netherlands, Lithuania, Spain and Ireland. The assessment included the effects of EU directives, EU regulations and national laws and regulations. The purpose of the comparison was to assess whether significant differences exist in the implementation of national and EU legislation resulting in regulatory burden and to provide recommendations how to achieve significant reductions for the particular sector. The review identified opportunities for improvement in national as well as EU legislation. For instance, the report concluded that the use of exemptions and lighter regimes for SME bakeries in EU legislation can reduce regulatory burdens and improve the economic viability of these businesses.

Italy compared in 2016 its notification requirements for food business operators with those in France, Spain and the United Kingdom. The review revealed cases of gold plating: in particular, some information required to be provided to the public administration in notification forms for the registration of food businesses was identified as redundant or not required by legislation. As a result of the review, Italy revised and standardised the notification requirements in line with practices in other European countries.

Source: Indicators of Regulatory Policy and Governance Surveys 2017; SIRA Consulting (2013), The CAR-Methodology applied to SME bakeries and a Scoping Comparison of Regulatory Burden in four EU Member States: Final report, study commissioned by the Dutch Ministry of Economic Affairs, Netherlands; Implementeringsrådet (2018), "Oversigt anbefalinger nabotjek", https://star.dk/media/6417/oversigt-implementeringsraadets-anbefalinger-og-iu-svar-nabotjek.pdf (accessed September 2018).

Ongoing stock management

Governments are increasingly trying to limit the flow of regulatory costs stemming from new regulations and reduce the existing regulatory stock. One of the approaches that has been gaining ground in the last five years is offsetting new regulations by reducing the existing ones (Trnka and Thuerer, 2019[11]). While not strictly forms of evaluation in themselves, regulatory offsetting approaches such as stock-flow linkage rules or net regulatory burden reduction targets can provide a strong motivation for regulators to evaluate the worth of regulations in place. However, they need to be applied cautiously and it is important to consider both costs and benefits of a regulation before changes to regulations are made (OECD, Forthcoming[3]).

The use of stock-flow linkage rules, i.e. requirements to remove or rationalise existing regulation when introducing new regulations (e.g. one-in one out rule), is not yet widespread among EU Member States. Currently, only ten Member States have formalised stock-flow linkage rules in place, requiring removal of existing regulations when introducing new ones or to reduce 'red tape burdens' by certain amounts annually. This includes a great variety of approaches among EU Member States (see Box 4.4). Out of the countries having employed regulatory offsetting approaches, only France, Germany and the United Kingdom have conducted independent evaluations of the efficiency and effectiveness of these programmes, indicating that there is still a lack of knowledge how such requirements affect the regulatory process and regulatory outcomes.

Box 4.4. Approaches to regulatory offsetting in selected EU Member States

While the core idea of regulatory policy as promoted by the OECD has always been based on juxtaposing costs and benefits stemming from regulations in order to reach a conclusion as to the desirability of regulation, many OECD countries have added other regulatory management tools and techniques focusing on measuring and reducing regulatory costs in isolation.

The offsetting approach has its roots in setting net quantitative targets for reducing administrative (or later compliance/regulatory) costs, pioneered in the **Netherlands** in the 1990s with introducing a method to quantify administrative burdens in monetary terms – the Standard Cost Model – accompanied with a government commitment to reduce administrative burdens by 25% within five years (OECD, 2010).

The **United Kingdom** was the first OECD and EU country introducing an "One-In, One-Out" policy as an official government policy in 2011. The programme was deemed so successful that the Government decided to go further and double the offsetting by introducing the "One-In, Two-Out" approach. In 2015, the approach was even strengthened so every pound of newly created regulatory costs must be offset by a reduction of 3 pounds ("One-In, Three-Out").

France established a regulatory offsetting policy in 2013. The "*gel de la réglementation*" requires departments 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. Costs to local governments and citizens are also considered. The policy was replaced by a two-for-one policy ("*maîtrise du flux des textes réglementaires*") in 2017. The offsetting obligation was doubled with the intent to impose greater control of the flow and reduce the stock of regulatory texts.

In **Germany**, the "one-in, one-out" rule was introduced by the Government through its decision in 2015 as part of its "Bureaucracy Reduction and Better Regulation" agenda. With the start of the programme in 2006, the German Government set a goal "to cut measurably the costs of bureaucracy … and to avoid new information obligations." While the concept of measuring compliance costs was adopted in 2011, the council of ministers stated in June 2014 that the Government's "aim is to reduce the existing compliance costs".

More recently, **Spain** introduced their version of regulatory offsetting and **Finland** has completed a pilot project testing a one-in, one-out policy.

While the scope of these approaches differs between all countries, the United Kingdom, Germany and Spain excluded regulations implementing EU legislation from the offsetting obligation.

So*urce:* Trnka, D. and Y. Thuerer (2019), "One-In, X-Out: Regulatory offsetting in selected OECD countries", *OECD Regulatory Policy Working Papers*, No. 11, OECD Publishing, Paris, https://dx.doi.org/10.1787/67d71764-en; OECD (2010), *Why is Administrative Simplification So Complicated? Looking Beyond 2010*, Cutting Red Tape Series, OECD Publishing, Paris, https://doi.org/10.1787/9789264089754-en.

Methodology of *ex post* evaluation

Ex post evaluation can entail a wide range of criteria and methodological approaches. However, some common features to be considered in an evaluation framework can be identified (OECD, 2018[1]):

- *Relevance* – Do the policy goals cover the key problems at hand?
- *Effectiveness* – Was the policy effective in achieving the intended outcomes? Have there been perverse/negative effects?
- *Efficiency* – Is the regulation the most cost-effective solution to a given issue? Have there been any unintended consequences?
- *Alternatives* – What are the potential alternatives to the regulation, including regulatory or non-regulatory options?
- *Coherence* – Is the regulation coherent with existing regulations?

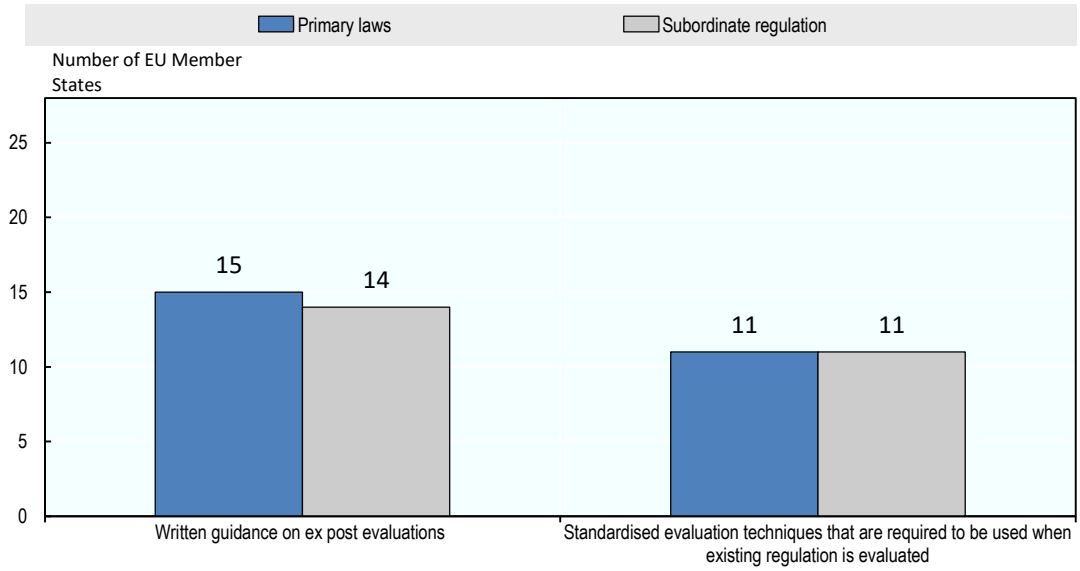
Standards and guidance for conducting ex post evaluation

Evaluations of laws and regulations, like regulations themselves, need to be underpinned by a sound methodological framework. Setting quality standards for *ex post* evaluations and providing guidance to regulators can ensure both developing and maintaining sufficient expertise in the public administration as well as to ensure quality control of externally conducted evaluations.

The survey data reveal that about half of all EU Member States provide methodological guidance documents to regulators that conduct *ex post* evaluations (Figure 4.6). This includes those countries that systematically require a periodic review of existing regulations. However, countries such as Belgium, France, Poland and Sweden have published guidance documents, despite no formal requirement to systematically conduct *ex post* evaluations. A third of EU Member States have invested in developing standardised evaluation techniques such as scientific and statistical methods, which are required to be used when existing regulations are evaluated.

The European Commission has put a strong focus on strengthening and refining its guidance and methodology for conducting *ex post* evaluations, most recently with the latest revision of the Better Regulation Guidelines and Toolbox in 2017. These documents include a set of required minimum evaluation criteria to be fulfilled when conducting *ex post* evaluations (European Commission, 2017[12]).

Figure 4.6. Guidance and standardised evaluation techniques available



Note: Data is based on 28 EU Member States.
Source: Indicators of Regulatory Policy and Governance Survey 2017, http://oe.cd/ireg.

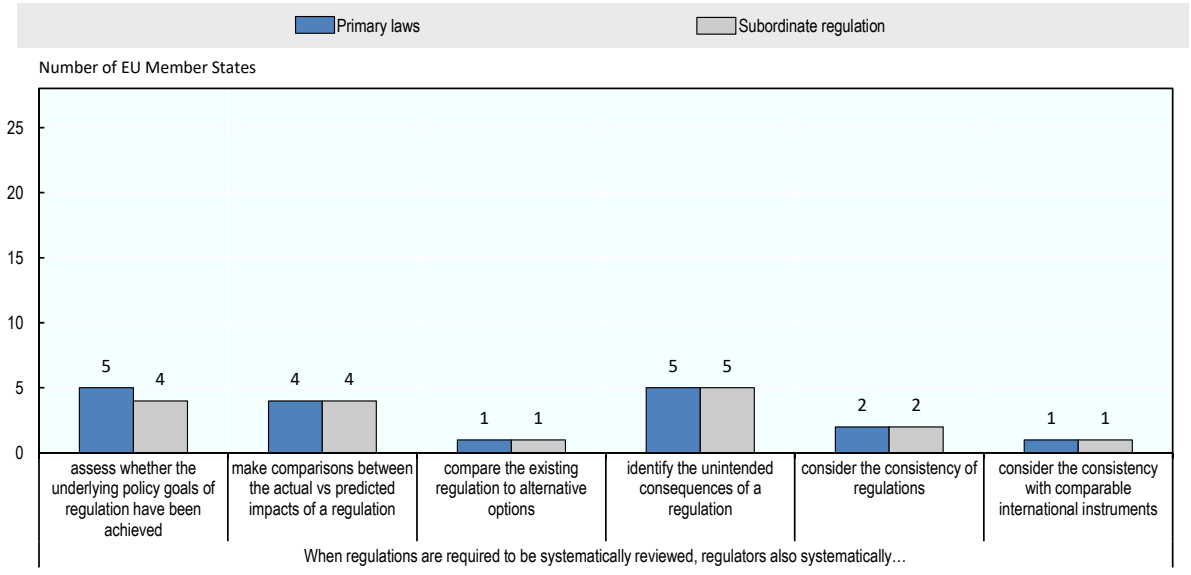
Assessing the effectiveness and efficiency of regulations

In order to effectively review and provide recommendations to improve existing laws, it is important to determine if the regulatory framework achieved its desired objectives, if the law was implemented efficiently and effectively, and to what extent any (unexpected) impacts of the regulatory intervention were properly addressed (Allio, 2015[13]; OECD, Forthcoming[3]).

Only five EU Member States and the European Commission require a systematic assessment of the underlying policy goals of existing regulations (Figure 4.7). This includes Austria, Denmark (for primary laws), Germany, Italy and the United Kingdom. This is somewhat unsurprising considering that only a few countries are required to systematically define a process and the methodology to assess the achievement of the regulation's goals when developing regulations (see Chapter 3).

Similarly, very few EU Member States systematically compare the actual impacts of regulations against the baseline scenario of expected impacts identified *ex ante*. Such a baseline assessment can be particularly useful to establish an initial picture against which the expected and actual effects can be measured. Systematically comparing the impact of the existing regulation against alterative options is rare in EU countries. This indicates that most Member States do not consider *ex post* evaluations as an opportunity to look beyond the effects of the chosen regulatory option and revisit whether other options might be more effective or efficient in achieving regulatory goals. Finally, EU Member States do not systematically extend the scope of *ex post* evaluations beyond the individual regulation under scrutiny to identify and address regulatory inconsistencies and overlaps between regulations or comparable international instruments.

Figure 4.7. Core elements of *ex post* evaluation



Note: Data is based on 28 EU Member States.
Source: Indicators of Regulatory Policy and Governance Survey 2017, http://oe.cd/ireg.

The European Commission has enshrined its assessment criteria for *ex post* evaluation, including an assessment whether the underlying policy goals of regulation have been achieved, in its Better Regulation Guidelines (see Box 4.5).

Box 4.5. Assessment criteria for evaluating EU legislation

According to the Better Regulation Guidelines of the European Commission, all evaluations and fitness checks of EU regulatory initiatives are required to assess a set of evaluation principles. These evaluation principles form the key questions every evaluation has to answer and can be extended if necessary:

1. **Effectiveness:** The evaluation should analyse the progress made towards achieving the objectives of the intervention, looking for evidence of why, whether or how these changes are linked to the EU intervention.
2. **Efficiency:** The evaluation should always look closely at both the costs and benefits of the EU intervention as they accrue to different stakeholders, identifying what factors are driving these costs/benefits and how these factors relate to the EU intervention.
3. **Relevance:** The evaluation must look at the objectives of the EU intervention being evaluated and see how well they (still) match the (current) needs and problems.
4. **Coherence:** The evaluation should look at how well the intervention works: i) internally and ii) with other EU interventions.
5. **EU added value:** The evaluation should consider arguments about the value resulting from EU interventions that is additional to the value that would have resulted from interventions initiated at regional or national levels by both public authorities and the private sector.

Source: European Commission (2017), "EU Better Regulation Toolbox", https://ec.europa.eu/info/better-regulation-toolbox_en (accessed August 2018).

Consideration of costs and benefits

Just as a well-designed (RIA) seeks to assess the likely net benefits of a new regulation, *ex post* reviews "ideally need to determine the extent to which these have been realised in practice" (OECD, Forthcoming[3]). However, identifying costs and benefits of a regulation during *ex post* evaluations remains sporadic and on an ad-hoc basis in EU Member States. Overall, the survey results substantiate the impression that there is a gap between requirements to identify and assess costs and benefits during the development phase of a regulation (see Chapter 3) and the *ex post* review of existing regulations.

Across EU Member States, around half of the countries include an assessment of costs in *ex post* evaluation, with a similar number of countries requiring an assessment of benefits (Figure 4.8). However, when required, it is mostly on a non-systematic basis for selected policy areas. All evaluations of EU legislation by the European Commission are required to identify both costs and benefits of a regulation as part of assessing the efficiency of regulation (see Box 4.5).

Figure 4.8. Requirements to assess and quantify costs and benefits

Note: Data is based on 28 EU Member States.
Source: Indicators of Regulatory Policy and Governance Survey 2017, http://oe.cd/ireg.

Conducting *ex post* evaluation in practice – the organisational context

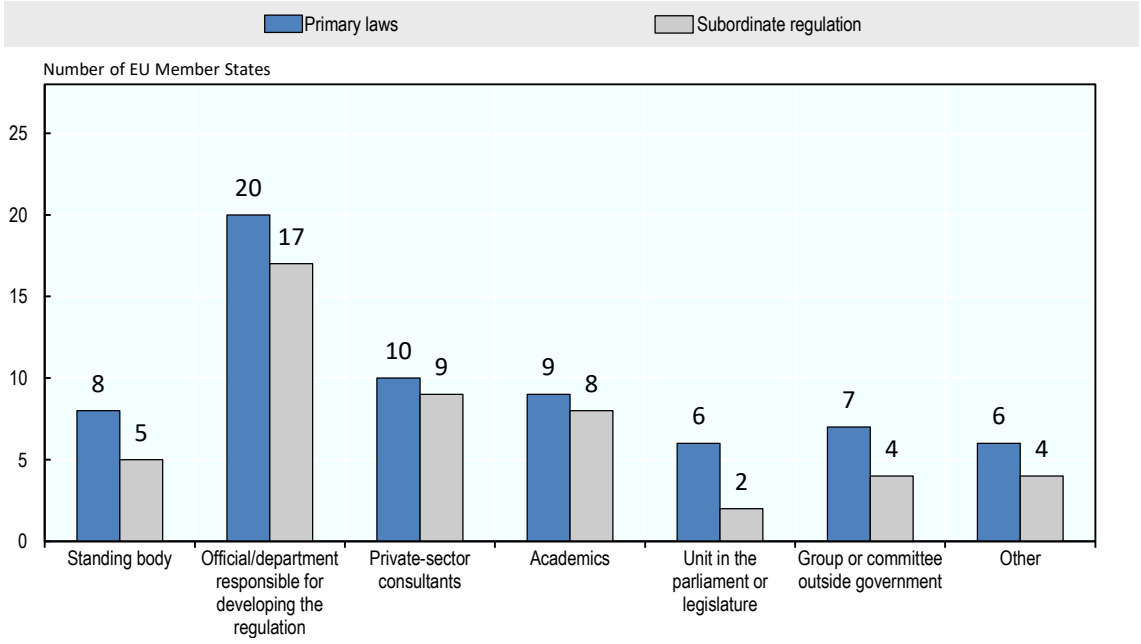
Who prepares ex post *evaluation?*

In the majority of EU Member States, evaluations are conducted by the department responsible for developing the regulation. Depending on the complexity and sensitivity of the reviewed area however, there are different rationales for deploying either internal or external resources for conducting *ex post* evaluations. For many regulations, evaluations are indeed best conducted within the department or ministry having policy responsibility, given the familiarity with developments over the life of a regulation and the ability to

draw on relevant skills and undertake reviews at relatively low cost. The employment of external consultants can be useful in supplementing government expertise, particularly when specialised skills are called for. The rational for an arm's-length' or independent review process might be particularly present the more "sensitive" a regulation and the more significant its economic or social impacts (OECD, Forthcoming[3]).

In most of the EU Member States, *ex post* evaluations for primary laws are prepared by the official or department responsible for developing the regulation. Approximately a third of Member States also delegates *ex post* evaluations to private-sector consultants or academics (Figure 4.9). Given that in almost three quarters of Member States, evaluations are conducted by regulators in the public administration, providing and developing more and better methodological guidance for these regulators gains even more importance.

Figure 4.9. Bodies responsible for preparing *ex post* evaluation



Note: Data is based on 28 EU Member States.
Source: Indicators of Regulatory Policy and Governance Survey 2017, http://oe.cd/ireg.

A surprising finding from the survey data is that in only few EU Member States, *ex post* evaluations are carried out by bodies outside the executive. In only around a quarter of Member States, evaluations are conducted by a standing body, a unit in the parliament or legislature or a group or committee outside government. Where the legislature is involved in conducting *ex post* evaluations, it can play a crucial role in institutionalising *ex post* evaluation into the regulatory cycle (see Box 4.6).

With regards to *ex post* evaluation conducted by the European Commission, the Commission's better regulation guidance, applicable since 2015, requires that an evaluation be carried out by the lead Directorate-General (DG). The lead DG can outsource part of the work to consultants or academics to support the evaluation. The responsibility for setting the scope of the evaluation, the evaluation questions and the final report, however, remains with the DG. Outside of the European Commission, the European Parliamentary Research Service's Directorate for Impact Assessment and

European Added Value has developed capacities to conduct *ex post* evaluation of existing regulations (European Parliamentary Research Service (EPRS), 2018[14]). Notably, the research service can provide parliamentary committees with *ex post* reviews of the implementation of specific existing EU laws or policies.

Box 4.6. *Ex post* evaluation by national parliaments in Belgium and the United Kingdom

In **Belgium**, the Parliamentary Committee for Legislative Monitoring is charged with evaluating laws that have been enacted for at least three years. It has to identify possible implementation difficulties (due to complexity, loops, incoherence, vagueness, contradictions) and assess how the law has effectively responded to its initial objective.

Requests can be sent by a large number of stakeholders (any administration in charge of implementing law; any authority in charge of law enforcement; any natural or legal person; and deputies and senators). The work of the committee is also to be fed by reports from the Court of Cassation and tribunals on difficulties encountered with laws and from the decisions of the Constitutional Court.

In the parliament of the **United Kingdom**, all laws are considered by committees for post legislative scrutiny since 2008 although only a small minority is chosen for a detailed inquiry and report. *Ex post* evaluation have traditionally been undertaken by experts in the Library of the Houses of Commons and Lords and, since 2002, by a designated Scrutiny Unit that takes on scrutiny and evaluation functions (UK Parliament website). Up to 20 staff strong, the Unit carries out evaluations upon initiative of the chairs of the committees while nonetheless abiding with the principles of political impartiality and objectivity.

The Unit assists and co-ordinates the work of legislative scrutiny by first providing a briefing for the committee that presenting basic sources for analyses. This briefing will enable the Committee to come to a judgment as to whether to hold a full and more detailed inquiry. If that is the case, the Unit, along with the designated Committee staff plans and undertakes a programme of research and evaluation to support the committee's inquiry. The Unit assist with the organisation of hearings, interviews as well as online consultations to gather evidence for affected parties and experts but also provides direct statistical or financial information.

One main area of post evaluation work relates to that Departmental Annual Reports, which outline to parliament and the public how each government department is organised, what it is spending its money on, what it is trying to achieve and how it is performing. Scrutinising these reports is one of the core tasks of departmental select committees, with the collaboration of the Scrutiny Unit.

Source: Allio, L. (2015), "Ex post evaluation of regulation: An overview of the notion and of international practices", in *Regulatory Policy in Perspective: A Reader's Companion to the OECD Regulatory Policy Outlook 2015*, OECD Publishing, Paris; UK Parliament website, "Scrutiny Unit", www.parliament.uk/scrutiny (accessed August 2018); OECD (2012), *Evaluating Laws and Regulations: The Case of the Chilean Chamber of Deputies*, OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264176263-en, p. 31ff and Annex B.

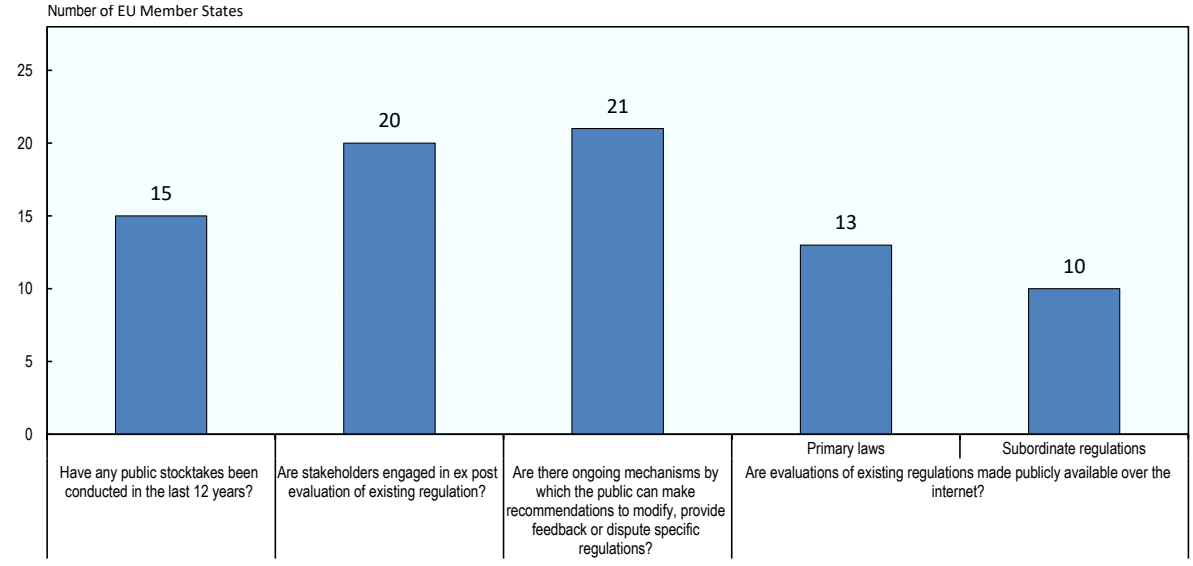
Transparency and stakeholder engagement

EU Member States use a variety of mechanisms to involve stakeholders in the review of existing legislation and enhance the transparency of the review process. Stakeholder engagement can be particularly useful in *ex post* evaluation to provide input how regulations are working "on the ground" and can be a possible channel for regulators to prompt feedback from those parties affected by a regulation. Stakeholders can be involved both in the process of identifying areas that may require reform as well as during the actual review process.

The vast majority of EU Members engage stakeholders in *ex post* evaluations of regulations (Figure 4.10). Similar to the practices in the OECD overall (OECD, 2018[5]), this is mostly done on an ad-hoc basis for some policy areas rather than more consistently across all policy areas in EU Member States. Engagement *ex post* is overall less frequent than stakeholder engagement when drafting new regulations (see Chapter 2). EU Member States which have made a commitment to more systematically engage stakeholders in *ex post* evaluations include Estonia, Italy, Luxemburg, Sweden and the United Kingdom.

With regards to ensuring transparency of the *ex post* evaluation system, more EU Member States could also make the final evaluation available to stakeholders and the wider public. Lack of information about the outcome of past reviews can reduce the future willingness of stakeholders to participate in the process.

Figure 4.10. Stakeholder engagement and transparency of *ex post* evaluation



Note: Data is based on 28 EU Member States.
Source: Indicators of Regulatory Policy and Governance Survey 2017, http://oe.cd/ireg.

Apart from engaging stakeholders directly in the review of existing regulations, the majority of EU Member States also have different ongoing mechanisms in place by which the public can provide feedback and make recommendations to modify existing regulations (see Box 4.7). These mechanisms range from electronic mailboxes, which are the most frequently used mechanism to provide feedback, to modifications of regulations triggered through an ombudsman or petitions for reconsideration.

Box 4.7. Involving stakeholders to identify regulator burden of existing regulations: Denmark's Business Forum for Better Regulation

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

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

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

Source: OECD Publishing, Paris; OECD (2016), Pilot database on stakeholder engagement practices in regulatory policy: first set of practice examples; www.enklereregler.dk.

The European Commission itself has recently strengthened the involvement of stakeholders in the review of existing regulation and introduced a two-stage consultation process, similar to the consultation during the development of regulations (see Chapter 2). First, an evaluation roadmap describing the context, purpose and scope of the evaluation is published online in the early stage of the development of an *ex post* evaluation for stakeholder feedback for four weeks. Following this initial feedback period, open public consultations on the main elements of all evaluations are mandatory during the development of *ex post* evaluations for 12 weeks. Further, drawing partially on good practices in EU Member States such as the Danish Business Forum or the UK Red Tape Challenge (OECD, 2016[15]), a REFIT Platform was introduced, bringing together representatives of the Commission, Member States and non-government stakeholders. Members of the platform, which are separated into the "government group" and the "stakeholder group", collect and assess suggestions for regulatory burden reduction from Member States and stakeholders and forward potentially promising proposals to the Commission (European Commission, 2015[16]).

Effectiveness of *ex post* evaluation

Information on how the *ex post* evaluation system works in practice is crucial to assess whether it is implemented correctly and achieves its objective of identifying and assessing whether regulations remain appropriate. Given that most EU Member States have yet to develop effective systems to review existing regulations, assessments of *ex post* evaluations are particularly valuable to identify areas for improvement and reform. This information can provide a useful benchmark to improve the compliance of regulators with requirements to conduct *ex post* evaluations. However, reports on the functioning of *ex post* evaluation systems in practice are far less frequent than reports with regards to the performance of the RIA system. This is not surprising given that few countries undertake *ex post* evaluation on a systematic basis.

Only five out of 28 EU Member States have indicated to report on the effectiveness of the *ex post* evaluation system, out of which three do so regularly (see Chapter 1). Published reports have provided valuable insights into the gaps of existing practices and in identifying areas for improvement. Austria, for example, publishes annual reports on the *ex post* evaluation system (*"Wirkungsorientierte Folgenabschätzung*"). These reports provide an overview of the annual activities of ministries with regards to *ex post* evaluation as well as insights into the performance of the *ex post* system as a whole. A finding from the 2017 annual report was that *ex post* evaluations overall still need to more systematically identify potential areas for improvement when regulations are evaluated (BMöDS, 2018[17]). In France, reports on the *ex post evaluation* system have been published on an ad-hoc basis. In 2017, the Secretariat-General for Government Modernisation (SGMAP) has commissioned an external evaluation of the public policy evaluation system initiated in 2013. The reported noted, inter alia, that stakeholders could be more actively involved when evaluations are conducted (KPMG/ Quadrant Conseil, 2017[18]).

Information on the performance of the *ex post* evaluation system of the European Commission are published in the annual report of the Regulatory Scrutiny Board (RSB). The RSB reviews *ex post* evaluations and fitness checks on major regulations and can provide a negative opinion if an evaluation does not comply with the guidance for evaluations. Based on the findings from its opinions, the RSB raised a number of issues for improvement in its 2017 annual report, such as efforts to collect the necessary information and data as well as the validity of conclusions in evaluation reports. The report also critically reflected the RSB's review process, noting that the scrutiny often comes too late in the process and it was sometimes not possible for the Commission's services to fully integrate the Board's recommendations (Regulatory Scrutiny Board, 2018[19]). In addition, the European Court of Auditors has recently reviewed the *ex post* evaluation system of the European Commission. The audit noted positively the frequent use of review clauses, "mandating the Commission and/or the Member States to carry out some form of *ex post* review on the whole or part of the piece of legislation" (European Court of Auditors, 2018[20]). However, it also identified the lack of common inter-institutional definitions regarding review clauses (European Court of Auditors, 2018[20]).

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Chapter 5. Country profiles

The country profiles provide an overview of regulatory practices including key achievements and areas for improvement for all EU Member States and the European Union. The country's composite indicator scores for stakeholder engagement, regulatory impact assessment and ex post *evaluation illustrate the situation of each country in these areas. Profiles also include information on the use of regulatory management tools for EU-made laws in each EU Member State as well as the institutional setup for regulatory oversight in each country.*

Note by Turkey:
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. Turkey recognises the Turkish Republic of Northern Cyprus (TRNC). Until a lasting and equitable solution is found within the context of the United Nations, Turkey 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 Turkey. The information in this document relates to the area under the effective control of the Government of the Republic of Cyprus.

European Union

Overview and recent developments

The European Commission (EC) is the executive of the European Union (EU). It proposes new initiatives and legislation, which are adopted by the European Parliament and the Council. With its 2015 Better Regulation Package, the EC has introduced significant changes to its Better Regulation policy, further refined in 2017.

Ex ante impact assessments continue to be carried out for major primary laws and subordinate legislation. Since 2015, Inception Impact Assessments, including an initial assessment of possible impacts and options to be considered, are prepared and consulted on for 4 weeks, before a full RIA is conducted. Following this initial feedback period, the EC conducts public consultations of 12 weeks during the development of initiatives with an impact assessment. Legislative proposals and the accompanying full RIA are then published online for feedback for 8 weeks following approval of the proposal by the College of Commissioners. Draft subordinate legislation is consulted on publicly for 4 weeks. Transparency could be further improved by making RIAs on subordinate legislation available at this stage with the opportunity to comment on the analysis.

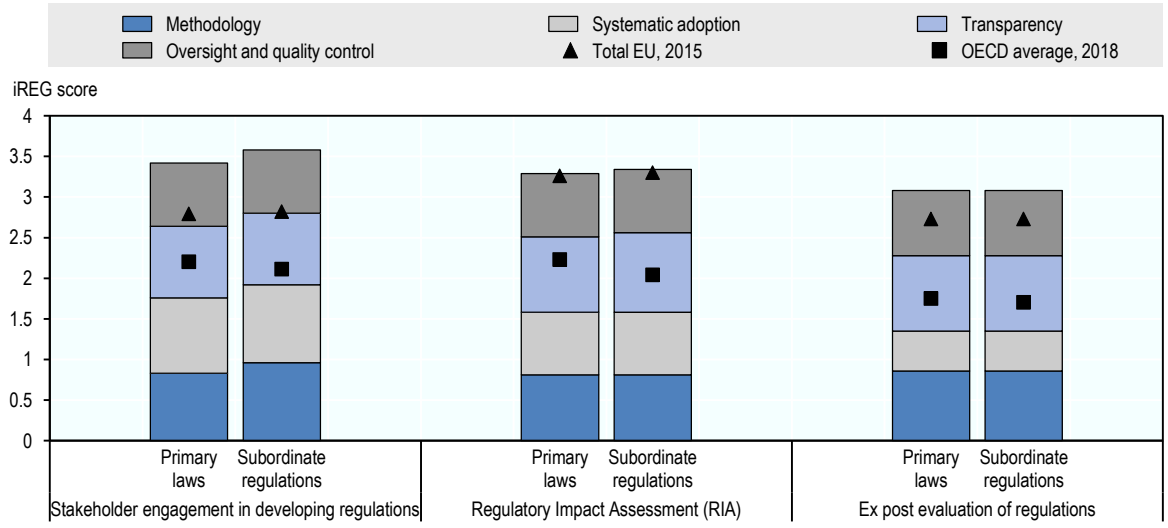
The *ex post* evaluation system, combining systematic evaluations of individual regulations with comprehensive "Fitness checks" of policy sectors, has been improved by providing the opportunity to comment on evaluation roadmaps for 4 weeks and on the main elements of all evaluations for 12 weeks. A REFIT Platform brings together representatives of the Commission, Member States and non-government stakeholders, to make suggestions for simplification and review of EU legislation.

Institutional setup for regulatory oversight

The Commission's **Secretariat General (SG)**, the Centre of Government body in charge of the overall coherence of the Commission's work, is responsible for overseeing Better Regulation. The SG reviews RIAs, stakeholder engagement processes and *ex post* evaluations, provides capacity support and makes recommendations for improvements of the system. The SG also serves as the secretariat to the **Regulatory Scrutiny Board (RSB)**, which checks the quality of all impact assessments and major evaluations and fitness checks informing EU legislation. The RSB is composed of three Commission officials and three outside experts and chaired by a Commission's Director General.

Outside the Commission, the **European Parliament (EP)'s Directorate for Impact Assessment** also reviews RIAs attached to draft legislation submitted by the Commission and can conduct more in-depth analysis and impact assessments of amendments at the request of EP committees. The **European Court of Auditors**, the EU Supreme Audit Institution, has also conducted performance audits of the regulatory management system.

Indicators of Regulatory Policy and Governance (iREG): European Union, 2018



Notes: The more regulatory practices as advocated in the *OECD Recommendation on Regulatory Policy and Governance* a country has implemented, the higher its iREG score. Results presented apply to all legislation (regulations, directives and implementing and delegated acts) initiated by the European Commission, who is the sole initiator of legislation in the EU system.
Source: Indicators of Regulatory Policy and Governance Surveys 2014 and 2017, http://oe.cd/ireg.

Negotiating and implementing EU legislation

Negotiation stage: Most EU directives and EU regulations are adopted by the Council of the EU and the European Parliament through the ordinary legislative procedure. Throughout this process, the Council and the European Parliament separately review the Commission's legislative proposal. In the Council and its sub-committees, Member States' governments propose amendments and negotiate a common position on the legislative draft. Each Member State may undertake stakeholder engagement and regulatory impact assessment to help inform its negotiation position. The Council's role in conducting impact assessments on amendments made in its committees has so far remained limited. EU legislation is adopted once the Council and the Parliament agree on a joint text.

Transposition stage: Member States are required to transpose EU directives, i.e. to incorporate them into their national laws, by adopting dedicated transposition measures. The transposition of EU directives provides EU countries with considerable latitude on the process and method of implementation. Many directives are designed such that they provide scope for Member States to include additional provisions. Governments usually transpose directives through domestic legislative procedures and may consult stakeholders and conduct regulatory impact assessment throughout this process. Each directive is required to be transposed to a specific deadline set in each directive. The Commission monitors the timely and legally accurate transposition of directives and can initiate infringement procedures where the transposition of directives is delayed.

Austria

Overview and recent developments

In Austria, RIA has been mandatory for all primary laws and subordinate regulations since 2013. A threshold test introduced in 2015 determines whether a simplified or full RIA has to be conducted for draft regulations. The new threshold limits the requirement for *ex post* evaluations introduced in 2013 to regulations passing the threshold. Assessments of whether underlying policy goals have been achieved, the comparison of actual and predicted impacts, and the identification of costs, benefits and unintended consequences of regulations are part of the standard methodology for *ex post* evaluations.

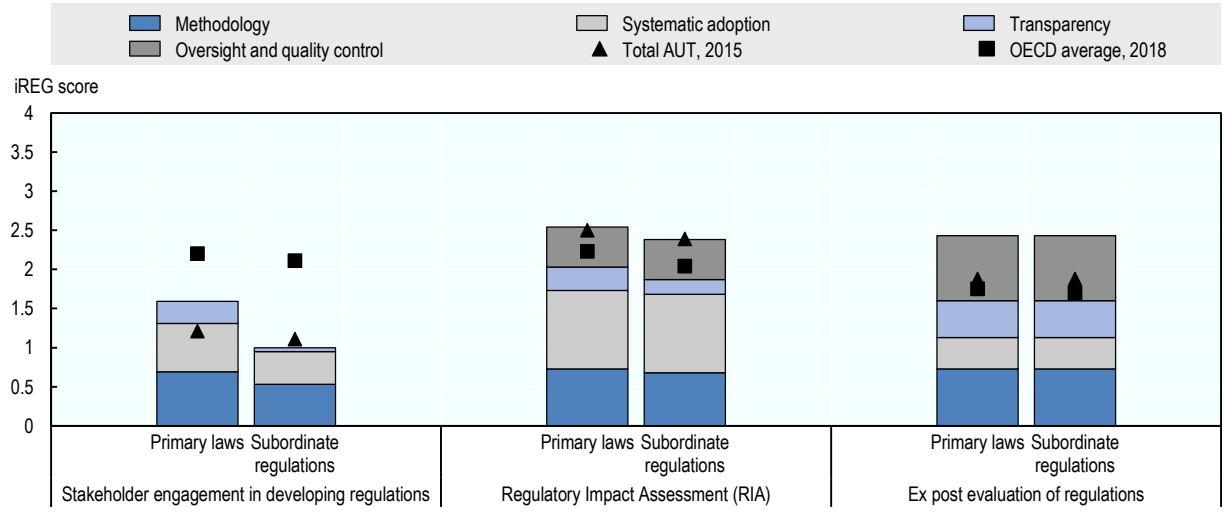
A resolution by the Austrian Parliament has recently triggered an extension of the scope of public consultations on draft primary laws. Since September 2017, all draft primary laws are available on the website of Parliament together with a short description of the legislative project in accessible language, the RIA and other accompanying documents. The public can submit comments on the draft regulation or support comments made by others online. Furthermore, an interactive crowdsourcing platform will be launched in 2018 to provide the public with an opportunity to express their views on planned government reforms prior to important future laws being drafted. This initiative could be a gateway towards establishing a more systematic approach to involving stakeholders earlier in the development of regulations to inform officials about the policy problem and possible solutions. Austria would benefit from extending the scope of public consultations to subordinate regulations, for which no systematic public consultations are conducted.

Institutional setup for regulatory oversight

The **Federal Performance Management Office (FPMO)** at the Federal Ministry for the Civil Service and Sport reviews the quality of all RIAs and *ex post* evaluations and provides advice during their development. The FPMO publishes its opinions on RIAs for primary laws and can ask administrators to revise RIAs if their quality is deemed insufficient. The FPMO also issues guidelines and provides training on RIA and *ex post* evaluation and co-ordinates the use of these tools across government. It also reports annually to Parliament on the implementation of the RIA and *ex post* evaluation system.

The **Ministry of Finance** supports the FPMO's work by reviewing assessments of financial impacts and costs in RIAs and *ex post* evaluations. It is also involved in issuing the guidelines for these tools. The **Federal Ministry of Constitutional Affairs, Reforms, Deregulation and Justice's Constitutional Service** scrutinises the legal quality of regulation under development and issues formal opinions on legal quality that are published on the website of Parliament.

Indicators of Regulatory Policy and Governance (iREG): Austria, 2018



Note: The more regulatory practices as advocated in the *OECD Recommendation on Regulatory Policy and Governance* a country has implemented, the higher its iREG score. The indicators on stakeholder engagement and RIA for primary laws only cover those initiated by the executive (78% of all primary laws in Austria).
Source: Indicators of Regulatory Policy and Governance Surveys 2014 and 2017, http://oe.cd/ireg.

Requirements to use regulatory management tools for EU-made laws: Austria

Stakeholder engagement		Regulatory impact assessment	
Development stage			
The government facilitates the engagement of domestic stakeholders in the European Commission's consultation process	No		
Negotiation stage			
Stakeholder engagement is required to define the negotiating position for EU directives/regulations	No	RIA is required to define the negotiating position for EU directives/regulations	Yes
Consultation is required to be open to the general public	No		
Transposition stage			
Stakeholder engagement is required when transposing EU directives	Yes	RIA is required when transposing EU directives	Yes
The same requirements and processes apply as for domestically made laws	Yes	The same requirements and processes for RIA apply as for domestically made laws	Yes
Consultation is required to be open to the general public	No	RIA includes a specific assessment of provisions added at the national level beyond those in the EU directives	No
		RIA distinguishes between impacts stemming from EU requirements and additional national implementation measures	No

Source: Indicators of Regulatory Policy and Governance Survey 2017, http://oe.cd/ireg.

Belgium

Overview and recent developments

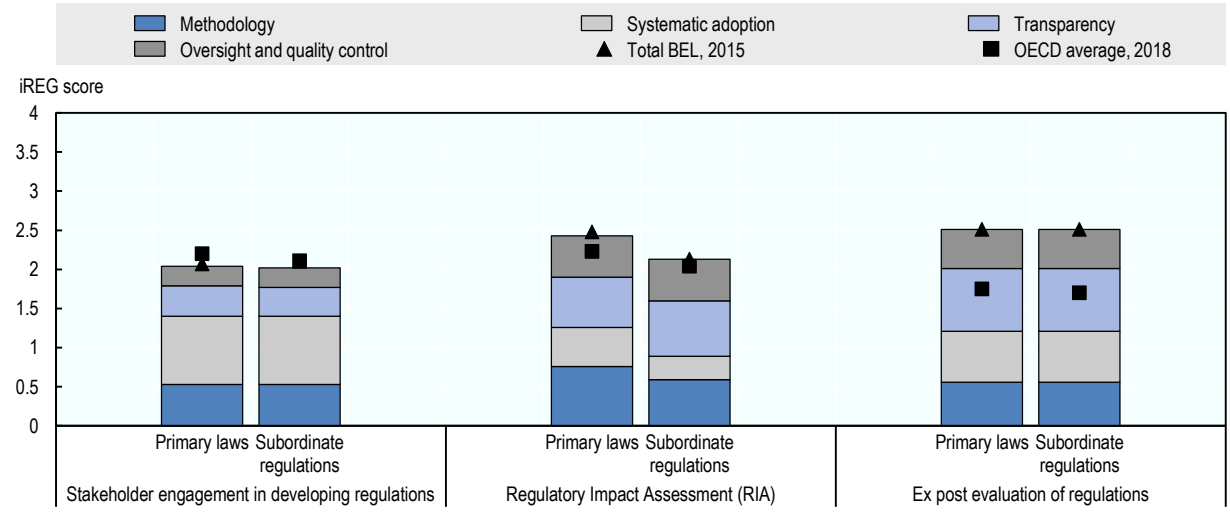
The institutional and policy framework for regulatory quality at the federal level has remained relatively stable since the 2015 Regulatory Policy Outlook. RIA is mandatory for all primary and subordinate legislation submitted to the Council of Ministers at the federal level and is usually shared with social partners as a basis for consultation. Periodic *ex post* review of legislation is mandatory for some legislation and sunsetting clauses are sometimes used. Within the executive, since 2013 the Agency for Administrative Simplification (ASA) within the Prime Minister's Office, which was responsible for assessing administrative burdens, is also responsible for the whole better regulation policy. The ASA is supported by an Impact Assessment Committee that provides advice on RIA.

Consultation and engagement could be further strengthened. For example, consultation with the general public is not systematic and there is currently no single central government website listing all ongoing consultations. While RIA can be shared with social partners during consultation, it is not released for consultation with the general public. In addition, to further enhance quality checks, the Impact Assessment Committee, which currently reviews RIA only at the request of the proposing ministry, could be also earlier and more systematically involved in the review of RIAs, e.g. by introducing a regulatory agenda listing regulations to be prepared in the following months that identifies which proposals will be reviewed by the Committee. At least high-impact proposals, for instance, could be submitted to the review of the Impact Assessment Committee.

Institutional setup for regulatory oversight

The **Agency for Administrative Simplification (ASA)** within the Prime Minister's Office co-ordinates RIA and steers the implementation of better regulation across the federal government. ASA is supported by an **Impact Assessment Committee (IAC)** that provides advice on RIAs at the request of the responsible ministry and reports annually on the quality of all RIA and the working of the RIA process. The IAC's members are designated by their respective administration and the composition of the board can change without a formal procedure. The **Council of State** also checks the legal quality of draft regulation.

Indicators of Regulatory Policy and Governance (iREG): Belgium, 2018



Notes: The more regulatory practices as advocated in the *OECD Recommendation on Regulatory Policy and Governance* a country has implemented, the higher its iREG score. The indicators on stakeholder engagement and RIA for primary laws only cover those initiated by the executive (79% of all primary laws in Belgium).and RIA for primary laws only cover those initiated by the executive (79% of all primary laws in Belgium).
Source: Indicators of Regulatory Policy and Governance Surveys 2014 and 2017, http://oe.cd/ireg.

Requirements to use regulatory management tools for EU-made laws: Belgium

Stakeholder engagement		Regulatory impact assessment	
Development stage			
The government facilitates the engagement of domestic stakeholders in the European Commission's consultation process	Yes		
Negotiation stage			
Stakeholder engagement is required to define the negotiating position for EU directives/regulations	No	RIA is required to define the negotiating position for EU directives/regulations	No
Consultation is required to be open to the general public	No		
Transposition stage			
Stakeholder engagement is required when transposing EU directives	Yes	RIA is required when transposing EU directives	Yes
The same requirements and processes apply as for domestically made laws	Yes	The same requirements and processes for RIA apply as for domestically made laws	Yes
Consultation is required to be open to the general public	No	RIA includes a specific assessment of provisions added at the national level beyond those in the EU directives	No
		RIA distinguishes between impacts stemming from EU requirements and additional national implementation measures	No

Source: Indicators of Regulatory Policy and Governance Survey 2017, http://oe.cd/ireg.

Bulgaria

Overview and recent developments

Bulgaria has significantly reformed its regulatory management system as a direct result of the commencement of the Law on Normative Acts on 4 November 2016. The law has extended minimum consultation periods with stakeholders to 30 calendar days, and resulted in the establishment of a central consultation portal, which is now better integrated with Bulgarian impact assessments for regulatory proposals. The central public consultation portal also provides direct feedback to participants that explains how their submission has helped shape final regulatory proposals.

The law also introduced a new regulatory impact assessment (RIA) requirement system, whereby regulatory proposals are now subject to either a partial or full assessment. Bulgaria established an oversight body for RIA quality control at the end of 2016 so as to help ensure RIA quality.

Indicators presented on stakeholder engagement and RIA for primary laws only cover processes carried out by the executive, which initiates approx. 42% of primary laws in Bulgaria. There are requirements to conduct RIA to inform the development of primary laws initiated by parliament, although they are relatively less stringent than those for laws made by the executive.

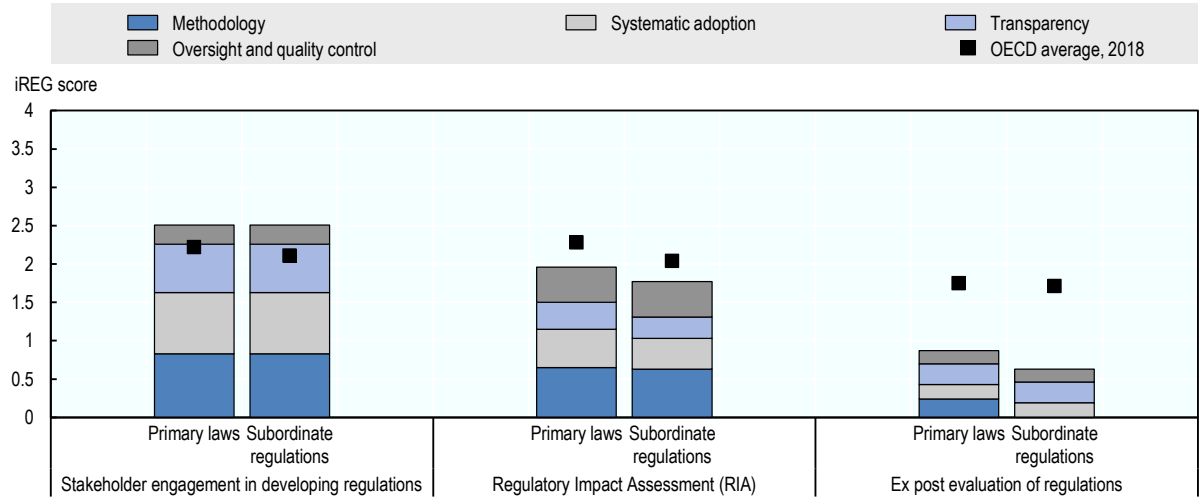
Since the commencement of the law, all new laws, codes and sub-statutory acts of the Council of Ministers are subject to *ex post* evaluation within five years of their respective commencement. Although *ex post* evaluations have been conducted, they are limited in number and in scope, focussing only on administrative burdens for business. Assessing a wider range of impacts would help to ensure that regulations remain appropriate over time.

Institutional setup for regulatory oversight

The **Council of Ministers** is responsible for promoting overall regulatory policy in Bulgaria, including in relation to stakeholder engagement, RIA, and *ex post* evaluation. An oversight body in the Administrative Modernisation Directorate of the Council of Ministers in Bulgaria is responsible for quality control of regulatory management tools. No evaluations have yet been conducted in Bulgaria to assess the efficiency and effectiveness of any of its regulatory management tools.

The **Council of Administrative Reform**, established under Decree 192 of 5 August 2009, acts as an advisory body to the Council of Ministers for the co-ordination of regulatory burden reduction on both business and citizens.

Indicators of Regulatory Policy and Governance (iREG): Bulgaria, 2018



Notes: The more regulatory practices as advocated in the *OECD Recommendation on Regulatory Policy and Governance* a country has implemented, the higher its iREG score. The indicators on stakeholder engagement and RIA for primary laws only cover those initiated by the executive (42% of all primary laws in Bulgaria).
Source: Indicators of Regulatory Policy and Governance Survey 2017, http://oe.cd/ireg.

Requirements to use regulatory management tools for EU-made laws: Bulgaria

Stakeholder engagement		Regulatory impact assessment	
Development stage			
The government facilitates the engagement of domestic stakeholders in the European Commission's consultation process	No		
Negotiation stage			
Stakeholder engagement is required to define the negotiating position for EU directives/regulations	No	RIA is required to define the negotiating position for EU directives/regulations	Yes
Consultation is required to be open to the general public	NA		
Transposition stage			
Stakeholder engagement is required when transposing EU directives	Yes	RIA is required when transposing EU directives	Yes
The same requirements and processes apply as for domestically made laws	Yes	The same requirements and processes for RIA apply as for domestically made laws	Yes
Consultation is required to be open to the general public	Yes	RIA includes a specific assessment of provisions added at the national level beyond those in the EU directives	No
		RIA distinguishes between impacts stemming from EU requirements and additional national implementation measures	NA

Source: Indicators of Regulatory Policy and Governance Survey 2017, http://oe.cd/ireg.

Croatia

Overview and recent developments

Croatia has made great strides in strengthening its regulatory policy framework. In 2017, a new RIA law entered into force, requiring an initial RIA to be carried out for all primary laws. The law does not include subordinate regulations. A full RIA has to be conducted for laws with a potentially high impact, requiring regulators to assess a broad range of environmental and social impacts. If deemed necessary, a test analysing the impacts on SMEs is undertaken which focuses mostly on administrative costs. In practice, however, RIAs are not of sufficient quality due to a lack of analytical capacity in ministries. Croatia could consider creating analytical centres with "RIA champions" in the most important ministries in order to strengthen capacities.

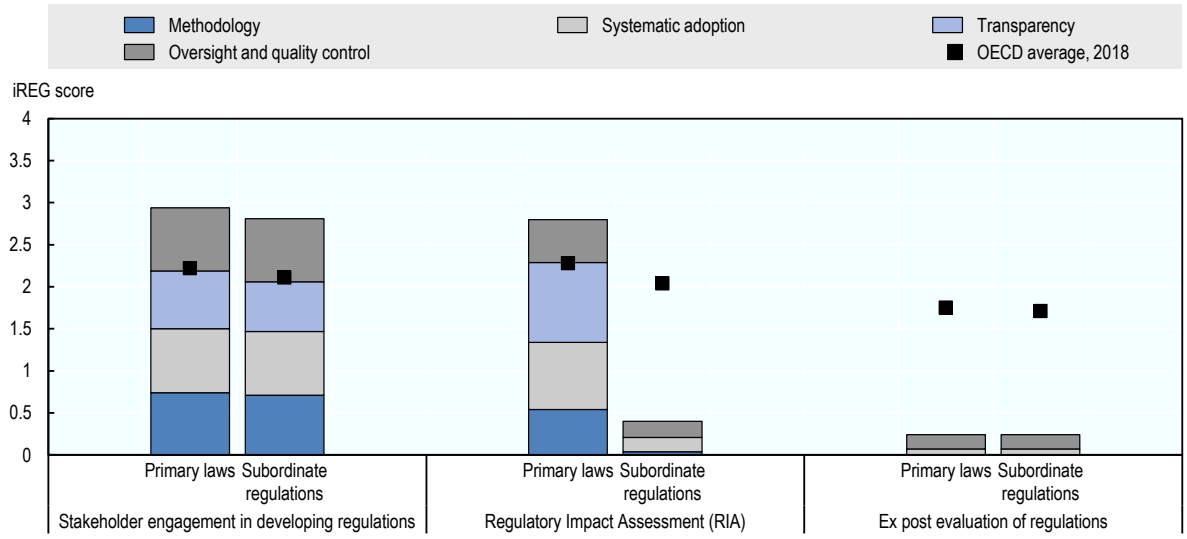
Croatia systematically engages with stakeholders. It makes use of *ad hoc* working groups including representatives from civil society, businesses and academia early in the process. Major draft regulations are then published for consultation on the interactive consultation portal *e-Savjetovanja* for a minimum of 30 days. RIA statements are also made available alongside major draft primary laws for comments. The body drafting the regulation has to publicly address all comments received during the consultation period.

Ex post reviews of regulation are limited to administrative burden reduction and *ad hoc* recommendations from working groups. In 2017, the Ministry of Economy introduced the "Action Plan for Administrative Burden Reduction" with the purpose of creating investment incentives and providing easier market access. Croatia should envisage targeted *ex post* reviews focusing on the performance of regulations ("fitness checks") or on particular sectors to improve the quality of regulations.

Institutional setup for regulatory oversight

The **Government Legislation Office (GLO)** located in the centre of government is the central co-ordination body for RIA. It reviews all preliminary assessments and full RIA reports, provides advice and can ask administrators to revise RIAs if the quality is deemed insufficient. The GLO is also responsible for ensuring the legal quality of regulations and for preparing the Annual Legislative Activities Plan. The **Ministry of Economy, Entrepreneurship and Crafts** reviews the impacts of regulations on small- and medium-sized businesses by conducting an SME-test. The ministry co-ordinates the "Action Plan for Administrative Burden Reduction" and provides guidance and training to civil servants on the SME-test and the Standard Cost Model. The **Government Office for Cooperation with NGOs** co-ordinates the central consultation portal *e-Savjetovanja.*

Indicators of Regulatory Policy and Governance (iREG): Croatia, 2018



Notes: The more regulatory practices as advocated in the *OECD Recommendation on Regulatory Policy and Governance* a country has implemented, the higher its iREG score. The indicators on stakeholder engagement and RIA for primary laws only cover those initiated by the executive (91% of all primary laws in Croatia).
Source: Indicators of Regulatory Policy and Governance Survey 2017, http://oe.cd/ireg.

Requirements to use regulatory management tools for EU-made laws: Croatia

Stakeholder engagement		Regulatory impact assessment	
Development stage			
The government facilitates the engagement of domestic stakeholders in the European Commission's consultation process	No		
Negotiation stage			
Stakeholder engagement is required to define the negotiating position for EU directives/regulations	No	RIA is required to define the negotiating position for EU directives/regulations	No
Consultation is required to be open to the general public	No		
Transposition stage			
Stakeholder engagement is required when transposing EU directives	Yes	RIA is required when transposing EU directives	Yes
The same requirements and processes apply as for domestically made laws	Yes	The same requirements and processes for RIA apply as for domestically made laws	Yes
Consultation is required to be open to the general public	Yes	RIA includes a specific assessment of provisions added at the national level beyond those in the EU directives	No
		RIA distinguishes between impacts stemming from EU requirements and additional national implementation measures	No

Source: Indicators of Regulatory Policy and Governance Survey 2017, http://oe.cd/ireg.

Cyprus

Overview and recent developments

The comprehensive Action Plan for improving the regulatory framework in Cyprus was approved by the Council of Ministers in October 2015. The plan includes the promotion of impact assessment of new legislation, better consultation practices, and administrative simplification.

Stakeholder engagement does not always currently occur at an early stage of policy development — which is generally to identify the nature of the public policy problem and inform discussions about possible solutions, including non-regulatory ones — in Cyprus. The Consultation Guidelines issued in December 2016 presents best practices on consulting early. Consultation at a later stage of policy development is undertaken for both primary laws and subordinate regulations, and participants' views are made public. Although regulators are required to take feedback into account, they are currently not required to respond to participants' comments making it difficult for participants to see how their input has helped shaped regulatory proposals.

Regulatory impact assessment (RIA) is required for all regulatory proposals relating to both primary laws and subordinate regulations. Although Cyprus introduced a new RIA framework in September 2017, a number of gaps remain. The impact assessment system could be improved by adopting a more proportionate approach to regulatory proposals, considering a broader range of costs and benefits, and establishing an oversight body for RIA quality control.

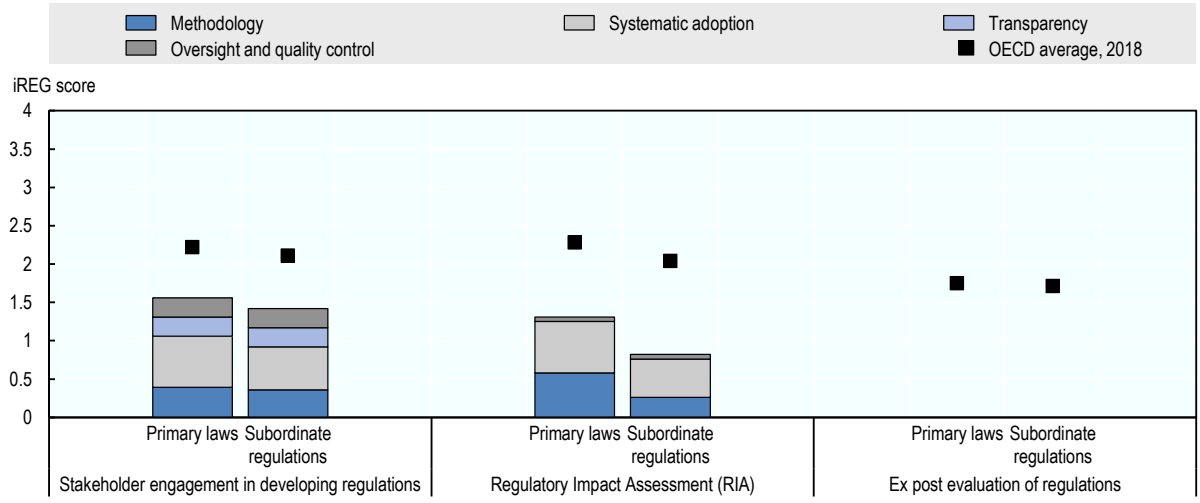
Ex post evaluation of laws and regulations is currently not undertaken in Cyprus.

Institutional setup for regulatory oversight

The **Unit for Administrative Reform of the Presidency** was established pursuant to the Council of Ministers Decision 77.561 of 2014 to assist the Deputy Minister to the President in implementing the Action Plan, and is responsible for the overall better regulation agenda in Cyprus. However, the Unit has no powers of oversight in relation to the use of regulatory management tools. The Public Administration and Personnel Department of the Ministry of Finance has recently taken responsibility for the implementation of the Better Regulation Agenda.

To date, no evaluations have been conducted in Cyprus to assess the efficiency and effectiveness of any of its regulatory management tools. In May 2018 however, the first RIA Annual Implementation Report was published. Its purpose was to present quantitative and qualitative data for the first year of implementation of the new RIA framework.

Indicators of Regulatory Policy and Governance (iREG): Cyprus, 2018



Notes: The more regulatory practices as advocated in the *OECD Recommendation on Regulatory Policy and Governance* a country has implemented, the higher its iREG score. The indicators on stakeholder engagement and RIA for primary laws only cover those initiated by the executive (77% of all primary laws in Cyprus).
Source: Indicators of Regulatory Policy and Governance Survey 2017, http://oe.cd/ireg.

Requirements to use regulatory management tools for EU-made laws: Cyprus

Stakeholder engagement		Regulatory impact assessment	
Development stage			
The government facilitates the engagement of domestic stakeholders in the European Commission's consultation process	Yes		
Negotiation stage			
Stakeholder engagement is required to define the negotiating position for EU directives/regulations	Yes	RIA is required to define the negotiating position for EU directives/regulations	No
Consultation is required to be open to the general public	No		
Transposition stage			
Stakeholder engagement is required when transposing EU directives	Yes	RIA is required when transposing EU directives	Yes
The same requirements and processes apply as for domestically made laws	Yes	The same requirements and processes for RIA apply as for domestically made laws	Yes
Consultation is required to be open to the general public	No	RIA includes a specific assessment of provisions added at the national level beyond those in the EU directives	Yes
		RIA distinguishes between impacts stemming from EU requirements and additional national implementation measures	Yes

Source: Indicators of Regulatory Policy and Governance Survey 2017, http://oe.cd/ireg.

Czech Republic

Overview and recent developments

The Czech Republic has a well-developed regulatory impact assessment process including mechanisms for quality control through the RIA Board operating at arm's length from the government. All draft primary and secondary legislation prepared by the executive has to be accompanied by a basic impact assessment; a full RIA has to be carried out for those drafts with new and significant impacts. The quality of RIA could be improved especially in terms of quantifications of impacts. RIA is not obligatory for legislative initiatives of the MPs, which represent about 40 % of laws.

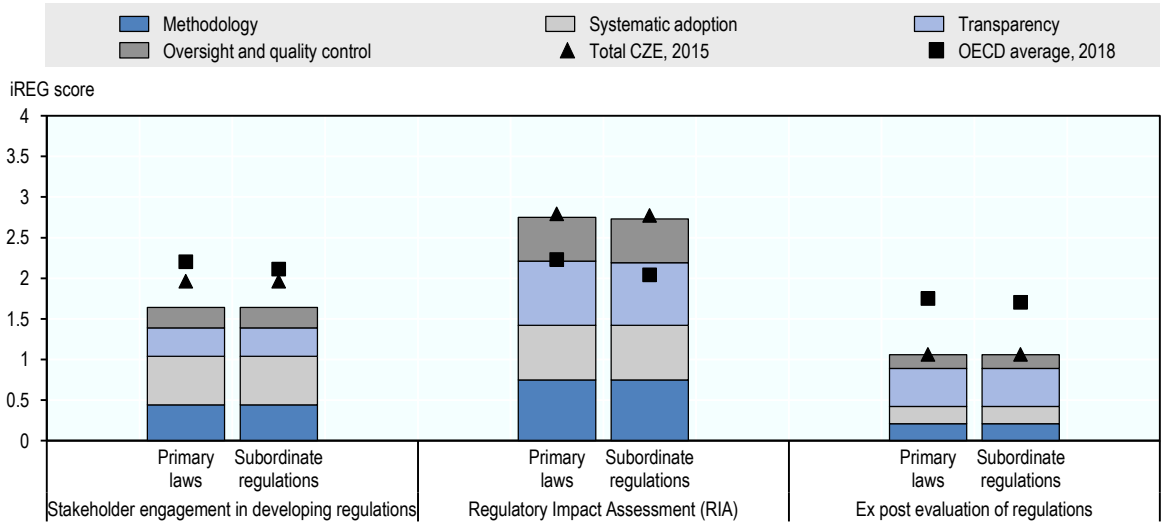
All legislative drafts submitted to the government are published on a government portal accessible by the general public. It is obligatory to conduct consultations within the RIA process and summarise their outcomes in RIA Reports. There are, however, no compulsory rules specifying the length or form of such consultations. The Czech Republic should standardise the public consultation process and stimulate stakeholders including the general public to contribute to consultations.

The Czech Republic was among the first to launch a programme on reducing administrative burdens. Cutting red tape is still a priority for the government, however, contrary to many other countries, the focus has not yet been widened to other regulatory costs. Evaluation of the performance of existing regulations takes place usually on an *ad hoc* basis and is used rather rarely. The Czech Republic plans to introduce more systematic *ex post* reviews of existing regulations.

Institutional setup for regulatory oversight

The **Government Legislative Council** is an advisory body to the Government overseeing the quality of draft legislation before it is presented to the Government. One of its working commissions, the **RIA Board**, evaluates quality of RIAs and adherence to the procedures as defined in the mandatory RIA Guidelines, provides assistance to drafting authorities if requested, and provides opinions on whether draft legislation should undergo a full RIA. The **Government Legislation Department** of the Office of the Government is responsible for monitoring legal quality of draft legislation as part of the interministerial comments procedure and when draft legislation is submitted to the Government Legislative Council and its working commissions. The **RIA Department** of the Office of the Government co-ordinates the RIA process within central government, provides methodological assistance and issues guidance materials for the RIA process. Compatibility with EU law is overseen by the **Department for Compatibility** of the Office of the Government.

Indicators of Regulatory Policy and Governance (iREG): Czech Republic, 2018



Note: The more regulatory practices as advocated in the *OECD Recommendation on Regulatory Policy and Governance* a country has implemented, the higher its iREG score. The indicators on stakeholder engagement and RIA for primary laws only cover those initiated by the executive (59% of all primary laws in the Czech Republic).
Source: Indicators of Regulatory Policy and Governance Surveys 2014 and 2017, http://oe.cd/ireg.

Requirements to use regulatory management tools for EU-made laws: Czech Republic

Stakeholder engagement		Regulatory impact assessment	
Development stage			
The government facilitates the engagement of domestic stakeholders in the European Commission's consultation process	No		
Negotiation stage			
Stakeholder engagement is required to define the negotiating position for EU directives/regulations	No	RIA is required to define the negotiating position for EU directives/regulations	No
Consultation is required to be open to the general public	NA		
Transposition stage			
Stakeholder engagement is required when transposing EU directives	Yes	RIA is required when transposing EU directives	Yes
The same requirements and processes apply as for domestically made laws	Yes	The same requirements and processes for RIA apply as for domestically made laws	Yes
Consultation is required to be open to the general public	No	RIA includes a specific assessment of provisions added at the national level beyond those in the EU directives	Yes
		RIA distinguishes between impacts stemming from EU requirements and additional national implementation measures	Yes

Source: Indicators of Regulatory Policy and Governance Survey 2017, http://oe.cd/ireg.

Denmark

Overview and recent developments

Regulatory reform has been an important feature of the Danish government agenda since the 1980s. The initial focus on competitiveness has been extended to burden reduction and more recently to the promotion of innovation-friendly business regulation. Established in 2012 and 2015 respectively, the Danish Business Forum for Better Regulation monitors the implementation of national regulation, and the EU-Implementation Committee and EU-Implementation Council monitor the implementation of EU business regulation. As from July 2018 all regulations must comply with the newly-introduced principles on agile and digital-proof legislation.

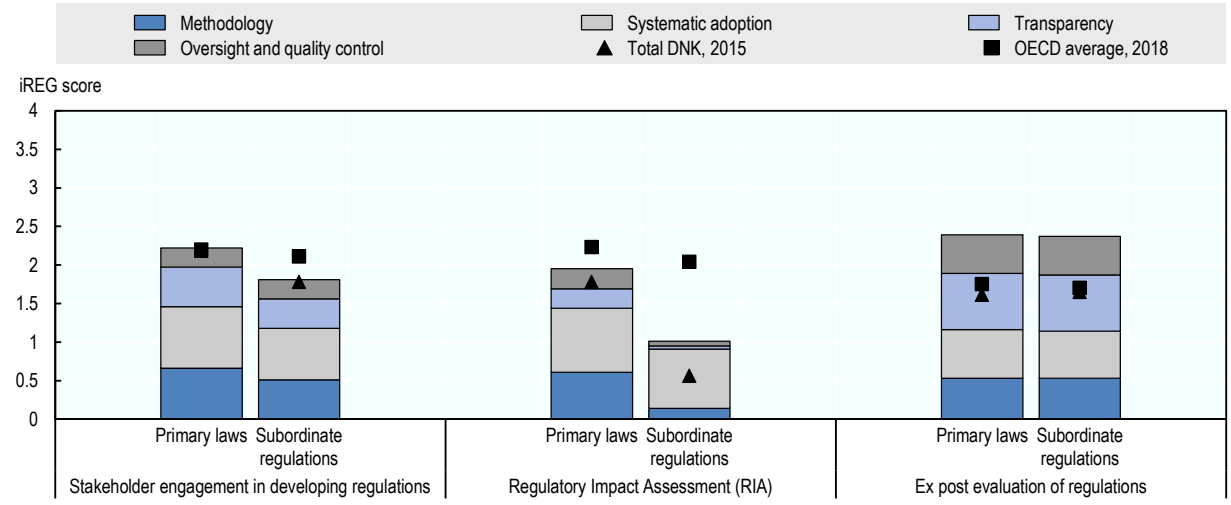
The government periodically reviews existing regulation with significant impacts and the Danish Business Forum conducts in-depth reviews of regulations in different policy areas. In 2015 the RIA methodology for business regulation as well as the net reduction target was updated to include additional costs and to require RIAs to be carried out for both primary and subordinate regulations above certain thresholds. The use of RIA could be further strengthened by the introduction of an oversight function that allows for returning proposed rules for which impact assessments are considered inadequate and which is not limited to regulations affecting business.

Denmark systematically engages with stakeholders and makes use of interactive consultation websites in the later stage of the regulatory process. Transparency could be further strengthened by informing the public in advance that a public consultation or a RIA is due to take place.

Institutional setup for regulatory oversight

The **Team Effective Regulation** at the Danish Business Authority (TER) is responsible for the quality control of RIAs of regulations creating significant burdens for businesses and also provides guidance and training in the use of good regulatory management tools, including RIA. Complementary, the **EU-Implementation Committee** located within the Ministry of Employment checks the quality of implementation of business-oriented EU legislation. Both bodies support systematic improvements across government and identify areas where regulation can be made more effective, the Committee in line with the five principles of EU-oriented business regulation. The **Ministry of Finance** is responsible for the quality control of compliance with the principles on digital-proof legislation and measures the regulatory effect on GDP. The **Ministry of Justice** oversees and enforces the overall judicial quality control of regulation.

Indicators of Regulatory Policy and Governance (iREG): Denmark, 2018



Notes: The more regulatory practices as advocated in the *OECD Recommendation on Regulatory Policy and Governance* a country has implemented, the higher its iREG score. The indicators on stakeholder engagement and RIA for primary laws only cover those initiated by the executive (98.7% of all primary laws in Denmark).
Source: Indicators of Regulatory Policy and Governance Surveys 2014 and 2017, http://oe.cd/ireg.

Requirements to use regulatory management tools for EU-made laws: Denmark

Stakeholder engagement		Regulatory impact assessment	
Development stage			
The government facilitates the engagement of domestic stakeholders in the European Commission's consultation process	Yes		
Negotiation stage			
Stakeholder engagement is required to define the negotiating position for EU directives/regulations	Yes	RIA is required to define the negotiating position for EU directives/regulations	No
Consultation is required to be open to the general public	Yes		
Transposition stage			
Stakeholder engagement is required when transposing EU directives	Yes	RIA is required when transposing EU directives	Yes
The same requirements and processes apply as for domestically made laws	No	The same requirements and processes for RIA apply as for domestically made laws	Yes
Consultation is required to be open to the general public	No	RIA includes a specific assessment of provisions added at the national level beyond those in the EU directives	Yes
		RIA distinguishes between impacts stemming from EU requirements and additional national implementation measures	Yes

Source: Indicators of Regulatory Policy and Governance Survey 2017, http://oe.cd/ireg.

Estonia

Overview and recent developments

Estonia did not make any major changes to its regulatory framework in the past three years. In line with the "Guidelines for development of legislative policy until 2018" adopted in 2012, preliminary RIAs are prepared for all primary laws and selected subordinate regulations. For regulations with significant impacts, in-depth RIAs are conducted.

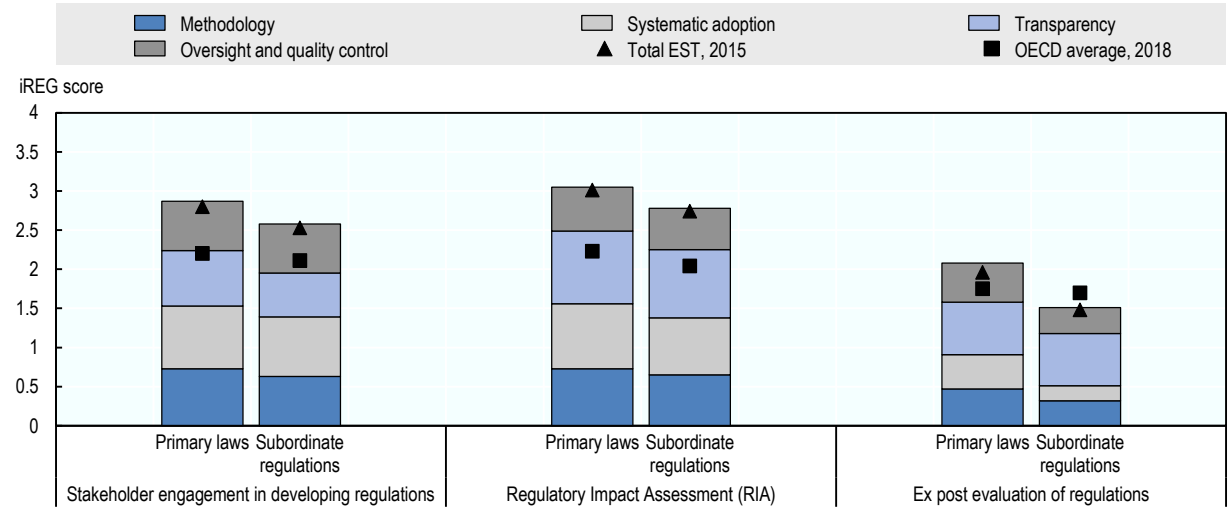
Estonia places a strong focus on accessibility and transparency of regulatory policy by making use of online tools. The online information system EIS tracks all legislative developments and makes available RIAs. Estonia currently works on an improved version of EIS. The interactive central website *osale.ee* displays all ongoing public consultations, but is not widely used and linkages to EIS could be strengthened. Later-stage consultation is conducted for all regulations. Public online consultations to inform officials about the nature of the policy problem and identify policy options are conducted in some cases.

Ex post evaluation is mandatory for some regulations since 2012. The completion of first evaluations is planned for 2018. Estonia could support the implementation of its *ex post* evaluation requirements by embedding stronger capacity to scrutinise the quality of *ex post* evaluations into the existing framework.

Institutional setup for regulatory oversight

The **Legislative Quality Division** of the Ministry of Justice takes the lead role in regulatory oversight in Estonia. It reviews the quality of RIAs and can return them for revision if their quality is deemed inadequate. The Division is also responsible for the systematic improvement and evaluation of regulatory policy. The Minister of Justice reports annually to parliament on the application of Better Regulation principles, including the compliance of RIAs and stakeholder engagement practices with formal requirements. The body also issues guidelines for RIA and scrutinises the legal quality of draft regulations. The **Strategy Unit** at the Government Office of Estonia complements this work by co-ordinating stakeholder engagement in policy making across government. The Legal and Research Department of the Estonian Parliament provides opinions and advice on the legal quality of draft laws at the request of parliamentary committees.

Indicators of Regulatory Policy and Governance (iREG): Estonia, 2018



Note: The more regulatory practices as advocated in the *OECD Recommendation on Regulatory Policy and Governance* a country has implemented, the higher its iREG score. The indicators on stakeholder engagement and RIA for primary laws only cover those initiated by the executive (86% of all primary laws in Estonia).
Source: Indicators of Regulatory Policy and Governance Surveys 2014 and 2017, http://oe.cd/ireg.

Requirements to use regulatory management tools for EU-made laws: Estonia

Stakeholder engagement		Regulatory impact assessment	
Development stage			
The government facilitates the engagement of domestic stakeholders in the European Commission's consultation process	Yes		
Negotiation stage			
Stakeholder engagement is required to define the negotiating position for EU directives/regulations	Yes	RIA is required to define the negotiating position for EU directives/regulations	Yes
Consultation is required to be open to the general public	Yes		
Transposition stage			
Stakeholder engagement is required when transposing EU directives	Yes	RIA is required when transposing EU directives	Yes
The same requirements and processes apply as for domestically made laws	No	The same requirements and processes for RIA apply as for domestically made laws	No
Consultation is required to be open to the general public	Yes	RIA includes a specific assessment of provisions added at the national level beyond those in the EU directives	Yes
		RIA distinguishes between impacts stemming from EU requirements and additional national implementation measures	No

Source: Indicators of Regulatory Policy and Governance Survey 2017, http://oe.cd/ireg.

Finland

Overview and recent developments

There has been a long-standing increase in attention to improving the quality of legislation and regulation in Finland. The current government programme (since 2015) proposes to create enabling regulation, promote deregulation and reduce administrative burdens. Finland has also introduced a pilot stock review (one in one out) in 2016-2017 for two ministries, whereby new compliance or administrative costs for business have to be off-set by corresponding savings. An evaluation of the pilot in 2018 states it has resulted in reduced stock and costs and increased transparency, and recommend the continuation of the pilot. The areas of regulation subject to *ex post* evaluations have increased since 2015, albeit without consistent methodologies.

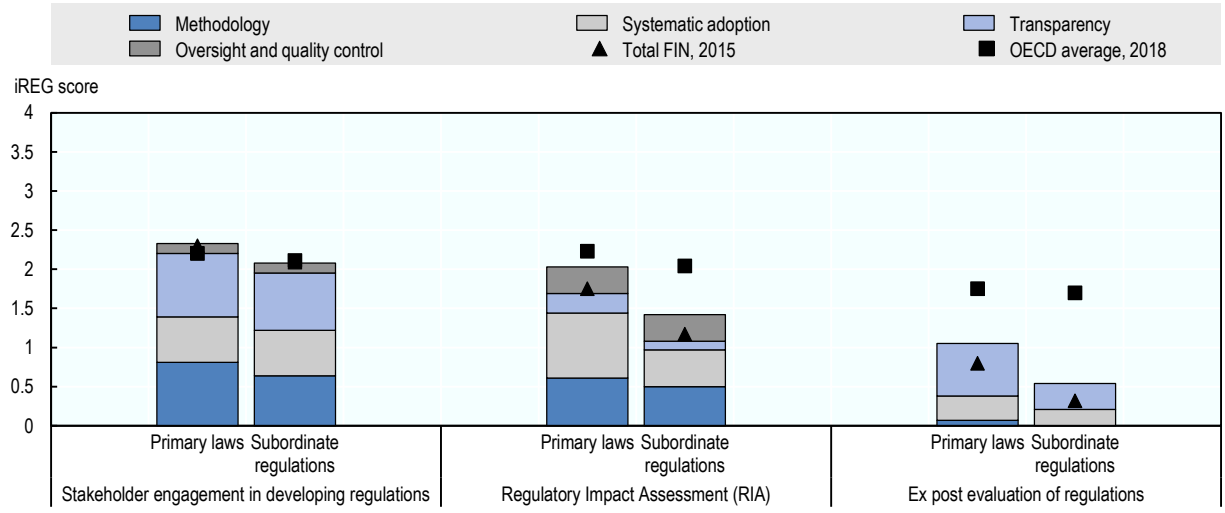
A number of stakeholder engagement platforms exist in Finland to inform the public of current draft legislations and to solicit feedback. These include lausuntopalvelu.fi launched in 2015, as well as the revamped (2017) Governments Registry for Projects and Initiatives (http://valtioneuvosto.fi/hankkeet).

Regulatory Impact Assessment (RIA) is formally required and conducted for all primary laws and for some subordinate regulations In 2016, Finland established the Finnish Council of Regulatory Impact Analysis (FCRIA) with the mandate of improving the quality of bill drafting and, in particular, of the impact assessments of legislative proposals. The review and use of RIA in Finland could be further strengthened by the introduction of an oversight function that allows for returning proposed rules for which impact assessments are deemed inadequate. Furthermore, the results and adequate resourcing of the FCRIA will merit close assessment in its first years of functioning for maximum impact of its activities.

Institutional setup for regulatory oversight

The **Finnish Council of Regulatory Impact Analysis (FCRIA)** is an arms-length body created in 2015. The FCRIA reviews selected RIAs (based on significance and representativeness) before approval of the final version of the regulation and provides advice as well as a formal opinion on the quality of the RIA. The FCRIA has no sanctioning power. The Council also has the mandate review *ex post* assessments of other bodies and plans to carry out a first review in 2018. The **Unit of Legislative Inspection** in the Ministry of Justice and the Chancellor of Justice share responsibilities linked to scrutiny of the legal quality of regulation under development. Observations made during this legislative inspection are taken into account for further versions.

Indicators of Regulatory Policy and Governance (iREG): Finland, 2018



Note: The more regulatory practices as advocated in the *OECD Recommendation on Regulatory Policy and Governance* a country has implemented, the higher its iREG score. The indicators on stakeholder engagement and RIA for primary laws only cover those initiated by the executive (100% of all primary laws in Finland).
Source: Indicators of Regulatory Policy and Governance Surveys 2014 and 2017, http://oe.cd/ireg.

Requirements to use regulatory management tools for EU-made laws: Finland

Stakeholder engagement		Regulatory impact assessment	
Development stage			
The government facilitates the engagement of domestic stakeholders in the European Commission's consultation process	Yes		
Negotiation stage			
Stakeholder engagement is required to define the negotiating position for EU directives/regulations	Yes	RIA is required to define the negotiating position for EU directives/regulations	Yes
Consultation is required to be open to the general public	Yes		
Transposition stage			
Stakeholder engagement is required when transposing EU directives	Yes	RIA is required when transposing EU directives	Yes
The same requirements and processes apply as for domestically made laws	Yes	The same requirements and processes for RIA apply as for domestically made laws	Yes
Consultation is required to be open to the general public	Yes	RIA includes a specific assessment of provisions added at the national level beyond those in the EU directives	No
		RIA distinguishes between impacts stemming from EU requirements and additional national implementation measures	No

Source: Indicators of Regulatory Policy and Governance Survey 2017, http://oe.cd/ireg.

France

Overview and recent developments

Since 2013, France has engaged in important simplification efforts. Following waves of simplification measures, the 2017 programme "Action publique 2022" identifies administrative simplification as one of the five priority actions and ministers are tasked to develop simplification plans. France also introduced a "one-in, two-out" regulatory offsetting approach in 2017. When transposing EU legislation, the adoption of requirements going beyond those set by the EU measure is prohibited.

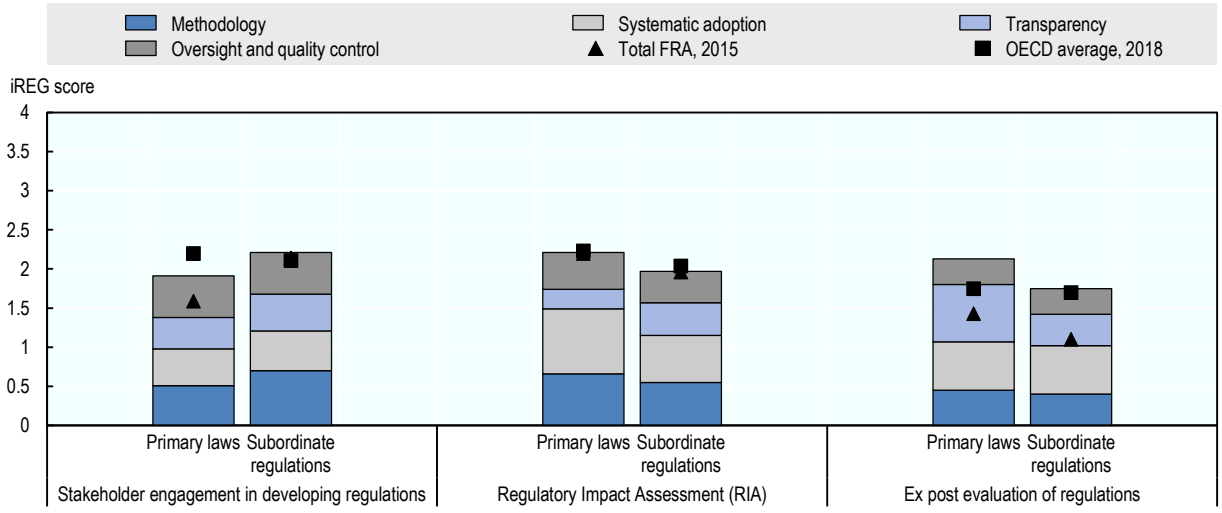
RIAs have to be prepared for all primary laws and major subordinate regulations and are available online. The range of impacts and costs assessed in RIA has been broadened in the past three years. The Sécrétariat Général du Gouvernement (SGG) at the Prime Minister's Office is responsible for reviewing the quality of RIAs and provides advice and expertise on drafting regulation to authorities. For primary laws, it can return RIAs if their quality is considered insufficient. Since mid-2017 the SGG no longer provides a formal opinion on RIAs for subordinate regulations. France's approach to *ex post* evaluation frequently integrates the evaluation of regulations and other policy tools. France Stratégie recently published new guidelines for policy evaluation that establishes standard evaluation techniques.

France does not require stakeholder engagement with the general public for the development of new laws, with the exception of environmental regulation. Informal consultations and consultation through consultative committees are however frequent. France could make public consultations a more cross-sectoral and systematic practice to fully reap the benefits of stakeholder engagement.

Institutional setup for regulatory oversight

The **SGG** ensures compliance with procedures (including with regulatory management tools such as RIA and stakeholder engagement), inter-ministerial co-ordination, liaison with the Conseil d'Etat and the Parliament. It provides guidance on how to conduct RIA, and ensures the appropriate publication of the legal text. The **Conseil d'Etat** also plays a critical role in regulatory policy, both upstream (through its consultative function for the government, including in the area of RIA, and its control of legal quality) and downstream (as the administrative judge of last resort). Contrary to the relative centralisation of the oversight of *ex ante* procedures, the *ex post* evaluation of regulations is fragmented across a range of institutions, including the **Cour des Comptes**, the **Parliament**, the **Conseil national d'évaluation des normes**, the **Direction interministérielle de la transformation publique** (formerly known as the Secrétariat général pour la modernisation de l'action publique) and **France Stratégie.**

Indicators of Regulatory Policy and Governance (iREG): France, 2018



Note: The more regulatory practices as advocated in the *OECD Recommendation on Regulatory Policy and Governance* a country has implemented, the higher its iREG score. The indicators on stakeholder engagement and RIA for primary laws only cover those initiated by the executive (77% of all primary laws in France).
Source: Indicators of Regulatory Policy and Governance Surveys 2014 and 2017, http://oe.cd/ireg.

Requirements to use regulatory management tools for EU-made laws: France

Stakeholder engagement		Regulatory impact assessment	
Development stage			
The government facilitates the engagement of domestic stakeholders in the European Commission's consultation process	No		
Negotiation stage			
Stakeholder engagement is required to define the negotiating position for EU directives/regulations	Yes	RIA is required to define the negotiating position for EU directives/regulations	No
Consultation is required to be open to the general public	No		
Transposition stage			
Stakeholder engagement is required when transposing EU directives	No	RIA is required when transposing EU directives	Yes
The same requirements and processes apply as for domestically made laws	No	The same requirements and processes for RIA apply as for domestically made laws	Yes
Consultation is required to be open to the general public	No	RIA includes a specific assessment of provisions added at the national level beyond those in the EU directives	Yes
		RIA distinguishes between impacts stemming from EU requirements and additional national implementation measures	No

Source: Indicators of Regulatory Policy and Governance Survey 2017, http://oe.cd/ireg.

Germany

Overview and recent developments

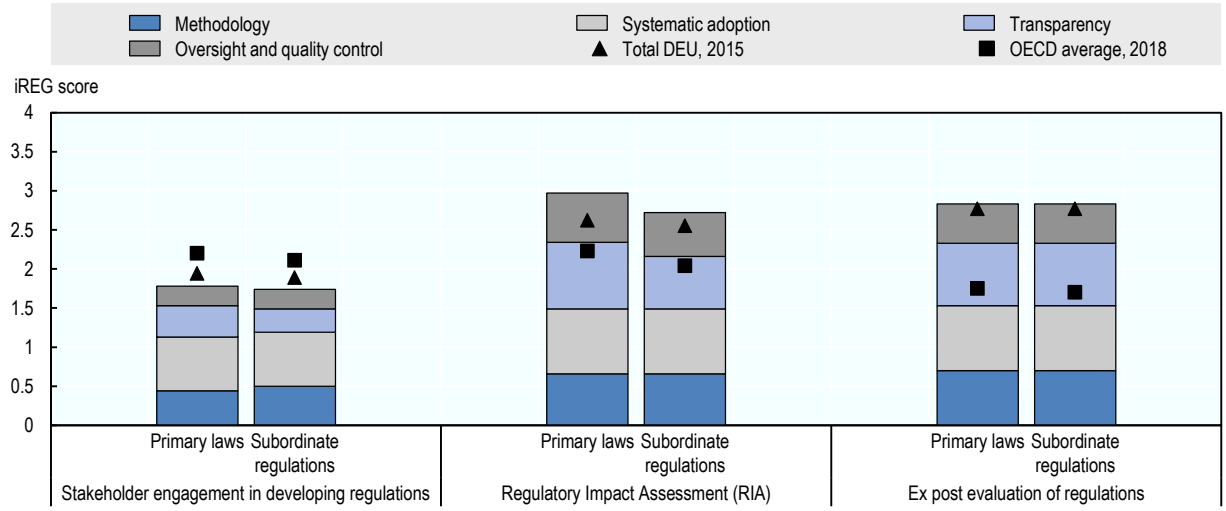
Germany has made several improvements to its regulatory policy system, especially with respect to *ex ante* impact assessments. RIA has been mandatory for all laws and regulations since 2000 and has most recently been extended in 2016 with the introduction of SME-test guidelines to promote SME-friendly policy development. Germany has put a strong emphasis on the reduction of costs of regulation, revising the EU *ex ante* procedure in 2016 to avoid compliance costs stemming from EU legislative acts and introducing the One-In, One-Out rule in 2015. The same year, Germany incorporated a behavioural insights team in the Policy Planning Unit in the Chancellery to act as a service unit for all Federal Ministries to inform legislative and administrative processes.

Since 2017, all draft regulations are available on ministries' websites, together with comments from relevant stakeholders and other accompanying documents. The Ministry for the Environment has launched a website on public participation and Germany also recently made use of green papers, inviting interested parties to participate in the newly introduced network of practitioners in agriculture. These initiatives could be a step towards establishing a more systematic approach to involving stakeholders earlier in the development of regulations. While the system to consult with social partners and experts is well-established, Germany could open consultations more systematically to the general public, release impact assessments for public consultation and systematically publish responses to consultation comments online.

Institutional setup for regulatory oversight

The **National Regulatory Control Council** (NKR) operates at arm's length from government. It reviews the quality of all RIAs and provides advice during all stages of rulemaking and has responsibilities in administrative simplification and burden reduction and *ex post* evaluation. In its annual reports to the Federal Chancellor, the NKR presents the main results of its oversight activity. The **Better Regulation Unit** in the Federal Chancellery is the central co-ordinating and monitoring body for the implementation of the Federal Government's programme on better regulation and bureaucracy reduction. The Federal Government reports to Parliament annually on the progress of the programme. The **Federal Audit Office** and the **Parliamentary Advisory Council on Sustainable Development** are responsible for evaluation of regulatory policy and identifying areas where regulation can be made more effective. Bodies within the Federal Ministries of the Interior and of Justice and Consumer Protection examine the legal quality and comprehensibility of legal drafts and a special unit of linguists provides linguistic advice to all ministries.

Indicators of Regulatory Policy and Governance (iREG): Germany, 2018



Note: The more regulatory practices as advocated in the *OECD Recommendation on Regulatory Policy and Governance* a country has implemented, the higher its iREG score. The indicators on stakeholder engagement and RIA for primary laws only cover those initiated by the executive (89% of all primary laws in Germany).
Source: Indicators of Regulatory Policy and Governance Surveys 2014 and 2017, http://oe.cd/ireg.

Requirements to use regulatory management tools for EU-made laws: Germany

Stakeholder engagement		Regulatory impact assessment	
Development stage			
The government facilitates the engagement of domestic stakeholders in the European Commission's consultation process	Yes		
Negotiation stage			
Stakeholder engagement is required to define the negotiating position for EU directives/regulations	No	RIA is required to define the negotiating position for EU directives/regulations	Yes
Consultation is required to be open to the general public	No		
Transposition stage			
Stakeholder engagement is required when transposing EU directives	Yes	RIA is required when transposing EU directives	Yes
The same requirements and processes apply as for domestically made laws	Yes	The same requirements and processes for RIA apply as for domestically made laws	Yes
Consultation is required to be open to the general public	No	RIA includes a specific assessment of provisions added at the national level beyond those in the EU directives	Yes
		RIA distinguishes between impacts stemming from EU requirements and additional national implementation measures	Yes

Source: Indicators of Regulatory Policy and Governance Survey 2017, http://oe.cd/ireg.

Greece

Overview and recent developments

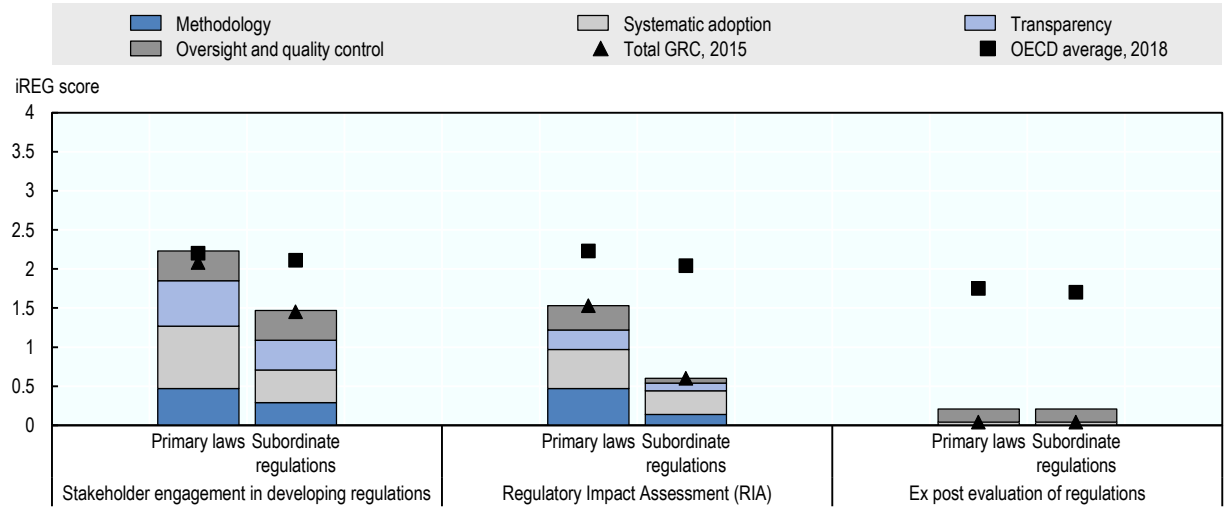
Law 4048 of 2012 sets an obligation for all ministries to apply the principles of Better Regulation to all legislative developments. Major challenges, however, still persist with its implementation. Regulatory impact assessment (RIA) is obligatory for all primary laws; however the quality is poor due to the short time period in which new drafts are developed. Public consultations are required for all primary laws. In practice, consultation usually takes place through exchanges with selected groups. Some draft primary laws and subordinate regulations are published on a consultation portal (www.opengov.gr). While Law 4048 requires that a public consultation report sums up comments received and which comments were taken into account, it is still not fully implemented, so that it is unclear how consultation comments are taken into account to finalise draft regulations.

Greece has been carrying out several reforms of its regulatory framework, including the establishment of a long-term codification plan of the main regulations in 2016 and creation of an electronic portal for the access to regulations as well as simplification of law in selected areas (labour law, VAT) in 2015. Reducing administrative burdens is not as widespread as in other OECD countries though some initiatives are underway. *Ex post* evaluations are not yet part of Greek regulatory management tools. Under the co-ordination of the Better Regulation Office of the General Secretariat of the Government (BRO) several ministries have initiated plans to carry out *ex post* evaluations. Better implementation of the requirements set by the law, especially in the area of impact assessment and stakeholder engagement, are advisable as well as further simplification of the regulatory framework.

Institutional setup for regulatory oversight

The **BRO** is responsible for the co-ordination of regulatory policy and oversight of the quality of RIAs as well as guidance and training on regulatory management tools, although the BRO's mandate is not fully implemented in practice. The BRO has no power to prevent draft proposals accompanied with poorly developed RIA from proceeding. In co-ordination with the Ministry of Administrative Reconstruction, it has held seminars on better regulation since 2017, focusing on *ex ante* and *ex post* evaluation of regulations, public consultation and legislative drafting. **The Legal Office of the General Secretariat of the Government** checks legal quality of government regulations and the **Central Lawmaking Committee** is responsible for issuing guidelines on the legal quality of proposed draft laws. **The National Council for Codification and Reform of the Greek Legislation** oversees the codification process, and identifies areas where regulation can be made more effective.

Indicators of Regulatory Policy and Governance (iREG): Greece, 2018



Note: The more regulatory practices as advocated in the *OECD Recommendation on Regulatory Policy and Governance* a country has implemented, the higher its iREG score. The indicators on stakeholder engagement and RIA for primary laws only cover those initiated by the executive (100% of all primary laws in Greece).
Source: Indicators of Regulatory Policy and Governance Surveys 2014 and 2017, http://oe.cd/ireg.

Requirements to use regulatory management tools for EU-made laws: Greece

Stakeholder engagement		Regulatory impact assessment	
Development stage			
The government facilitates the engagement of domestic stakeholders in the European Commission's consultation process	No		
Negotiation stage			
Stakeholder engagement is required to define the negotiating position for EU directives/regulations	No	RIA is required to define the negotiating position for EU directives/regulations	No
Consultation is required to be open to the general public	No		
Transposition stage			
Stakeholder engagement is required when transposing EU directives	Yes	RIA is required when transposing EU directives	Yes
The same requirements and processes apply as for domestically made laws	Yes	The same requirements and processes for RIA apply as for domestically made laws	Yes
Consultation is required to be open to the general public	No	RIA includes a specific assessment of provisions added at the national level beyond those in the EU directives	No
		RIA distinguishes between impacts stemming from EU requirements and additional national implementation measures	No

Source: Indicators of Regulatory Policy and Governance Survey 2017, http://oe.cd/ireg.

Hungary

Overview and recent developments

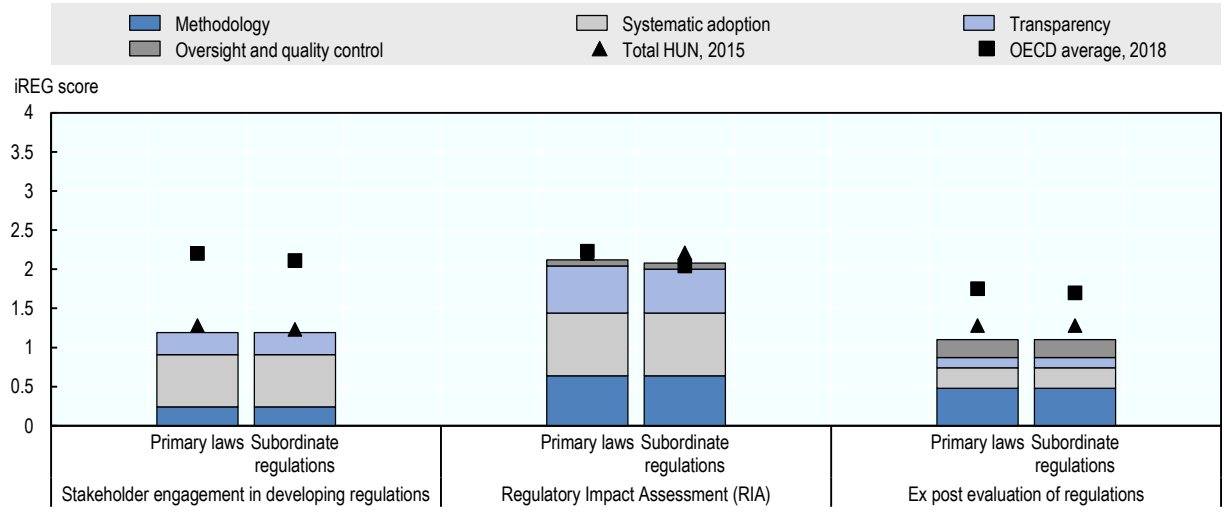
There have been little changes to the institutional and policy framework for regulatory quality in the last years. Stakeholder consultation is required for all primary and subordinate legislation. Draft legislation is posted on the governmental website and comments can be sent by email. No consultation is required in the early phases of the design of legislation. RIA is mandatory for all primary and subordinate legislation. Principle-based reviews on administrative burden were conducted in 2016 and 2017, focusing on reducing the average processing time of administrative procedures for business and citizens.

Within the Prime Minister's Office, the State Secretary in charge of the territorial administration makes proposals for simplifying regulatory burdens on citizens and businesses, but does not exercise quality checks on RIAs or ex-post reviews. Hungary would benefit from introducing oversight mechanisms to ensure sufficient quality of RIAs, ex-post evaluations and consultations. Quality checks could be accompanied by greater engagement with the stakeholders in the early phases of developing draft legislation.

Institutional setup for regulatory oversight

The **Government Office** within the Prime Minister's Office is responsible for co-ordinating the different phases of preparation of a regulatory proposal, from the consultation with other administrations once a Ministry has prepared a regulatory proposal and RIA to the meeting of the State Secretaries to the final Government meeting before a proposal is submitted to Parliament. The Government Office can also propose reforms or modifications related to the RIA and *ex post* evaluation framework. The Government Office prepares an annual report on RIA based on feedback from each Ministry, which is not publicly available. The **Office of the State Secretary** in charge of the territorial administration is responsible for reducing administrative burdens, promote a business-friendly environment and promote regulatory quality. The State Secretary reports to Cabinet on progress in implementing the simplification agenda.

Indicators of Regulatory Policy and Governance (iREG): Hungary, 2018



Note: The more regulatory practices as advocated in the *OECD Recommendation on Regulatory Policy and Governance* a country has implemented, the higher its iREG score. The indicators on stakeholder engagement and RIA for primary laws only cover those initiated by the executive (76% of all primary laws in Hungary).
Source: Indicators of Regulatory Policy and Governance Surveys 2014 and 2017, http://oe.cd/ireg.

Requirements to use regulatory management tools for EU-made laws: Hungary

Stakeholder engagement		Regulatory impact assessment	
Development stage			
The government facilitates the engagement of domestic stakeholders in the European Commission's consultation process	No		
Negotiation stage			
Stakeholder engagement is required to define the negotiating position for EU directives/regulations	Yes	RIA is required to define the negotiating position for EU directives/regulations	Yes
Consultation is required to be open to the general public	No		
Transposition stage			
Stakeholder engagement is required when transposing EU directives	Yes	RIA is required when transposing EU directives	Yes
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Consultation is required to be open to the general public	Yes	RIA includes a specific assessment of provisions added at the national level beyond those in the EU directives	NA
		RIA distinguishes between impacts stemming from EU requirements and additional national implementation measures	NA

Source: Indicators of Regulatory Policy and Governance Survey 2017, http://oe.cd/ireg.

Ireland

Overview and recent developments

Ireland recently made some improvements to its regulatory policy system, particularly in the areas of consultation and *ex post* evaluation.

A Consultation Principles and Guidance document was issued in 2016, and the government is more broadly promoting open data, citizen participation and greater public governance and accountability via the Open Government Partnership (OGP) National Action Plan. Progress is also underway to consolidate various department consultation notices on a central government website by the end of 2018. Despite these recent improvements, Ireland's consultation practices do not yet operate on a systematic basis across government departments.

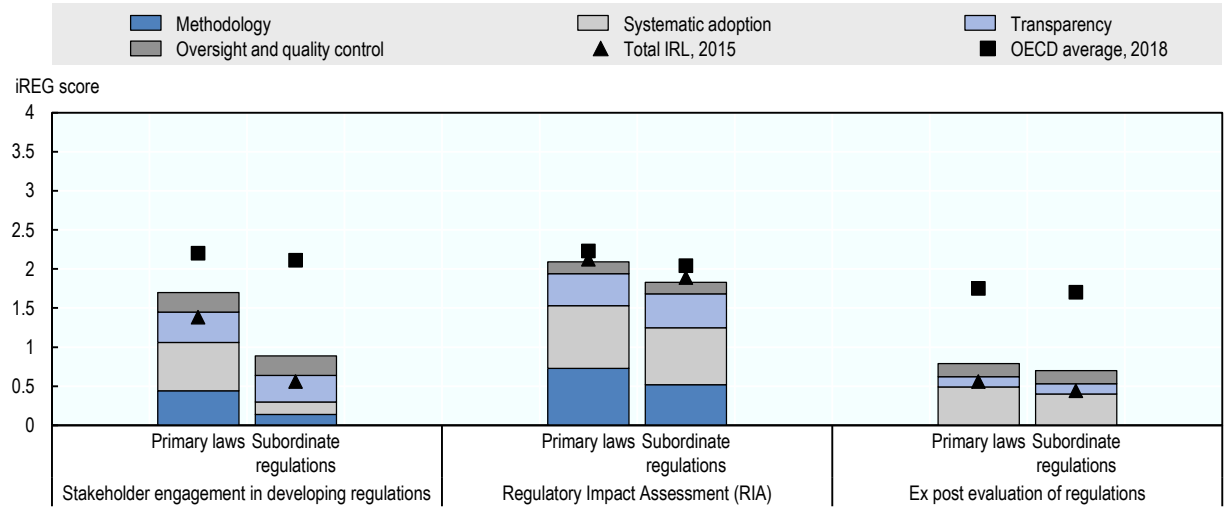
Since June 2016, standing orders from Parliament state that the Minister responsible for implementing a law must provide an *ex post* assessment of its functioning within a year. A number of sectoral Departments have also started to carry out policy and mandate reviews, which are required at least every seven years according to the Policy Statement on Economic Regulation issued in 2013.

Ireland continues to conduct mandatory RIA for all primary laws and major subordinate regulations. In order to more effectively monitor and assess the quality of RIA implementation, Ireland should consider establishing a central oversight body.

Institutional setup for regulatory oversight

The **Department of the Taoiseach** is responsible for the effectiveness of regulators and, together with the **Office of the Attorney General**, ensures the transparency and quality of legislation. It is also responsible for setting the overall government multi-sectoral policy in Ireland. As part of its overarching policy-setting, the Department of the Taoiseach aims to reduce regulatory burden, promote regulatory quality, encourage a business-friendly regulatory environment, and ensure inter-departmental co-ordination in regulatory development. The Department of the Taoiseach has pioneered the Better Regulation agenda in Ireland in 2004 and issued Ireland's first guidance document on RIA in 2005. The **Department of Public Expenditure and Reform (DPER)** has since taken over responsibilities on RIA guidance. DPER also provides training in various regulatory management tools, including RIA, ex-post evaluation, and stakeholder engagement. Most recently, DPER issued a Consultation Principles and Guidance document in 2016. However, the implementation of regulatory management tools and oversight of sectoral economic regulators remains the responsibility of the relevant Department(s).

Indicators of Regulatory Policy and Governance (iREG): Ireland, 2018



Note: The more regulatory practices as advocated in the *OECD Recommendation on Regulatory Policy and Governance* a country has implemented, the higher its iREG score. The indicators on stakeholder engagement and RIA for primary laws only cover those initiated by the executive (98% of all primary laws in Ireland).
Source: Indicators of Regulatory Policy and Governance Surveys 2014 and 2017, http://oe.cd/ireg.

Requirements to use regulatory management tools for EU-made laws: Ireland

Stakeholder engagement		Regulatory impact assessment	
Development stage			
The government facilitates the engagement of domestic stakeholders in the European Commission's consultation process	Yes		
Negotiation stage			
Stakeholder engagement is required to define the negotiating position for EU directives/regulations	No	RIA is required to define the negotiating position for EU directives/regulations	Yes
Consultation is required to be open to the general public	No		
Transposition stage			
Stakeholder engagement is required when transposing EU directives	No	RIA is required when transposing EU directives	Yes
The same requirements and processes apply as for domestically made laws	No	The same requirements and processes for RIA apply as for domestically made laws	Yes
Consultation is required to be open to the general public	No	RIA includes a specific assessment of provisions added at the national level beyond those in the EU directives	Yes
		RIA distinguishes between impacts stemming from EU requirements and additional national implementation measures	Yes

Source: Indicators of Regulatory Policy and Governance Survey 2017, http://oe.cd/ireg.

Italy

Overview and recent developments

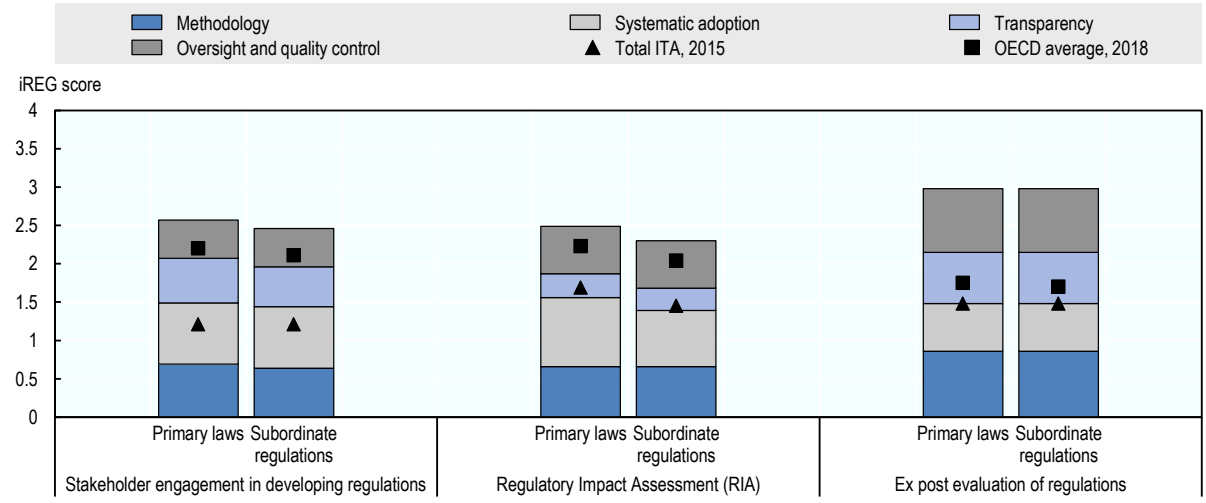
In September 2017, the Italian government introduced a new set of procedures for regulatory impact assessment (RIA), *ex post* evaluation, stakeholder engagement and regulatory planning. Ministries have to prepare a simplified RIA, providing a first assessment of expected impacts and a justification for not conducting a full RIA for low impact proposals, which is reviewed by the Department of Legal and Legislative Affairs (DAGL) within the Presidency of the Council of Ministers, whose gatekeeping role has also been strengthened. Ministries are also required to publish twice a year a 6-month legislative programme, highlighting planned RIAs and consultations. The programmes are to be posted on the central government website and the website of individual ministries. New guidelines to support public consultation aimed at enhancing transparency and participation were introduced in 2017 and new guidance on RIA and *ex post* evaluation was introduced in February 2018. *Ex post* evaluations have become more commonplace across a wider range of policy areas since 2015.

The challenge ahead is to "connect the dots" to develop a culture of evidence-based user-centric policy making. For instance, *ex post* evaluations could be more systematically planned when preparing RIAs for major legislation and quality filters and advice could continue to be strengthened. Consultation could become more systematic and consistent across different ministries and used to understand citizens' preferences, gather evidence on implementation options (early stage) and gaps (evaluation).

Institutional setup for regulatory oversight

The **Department of Legal and Legislative Affairs (DAGL)** of the Presidency of the Council of Ministers reviews the quality of RIAs and *ex post* evaluations. It can issue a negative opinion to the State Secretary to the Presidency if the quality of RIA is deemed inadequate and before the draft legislation is presented to the Council. The DAGL also validates planned RIAs and consultations included in the 6-month legislative programmes, proposes changes to the regulatory policy framework, promotes training, provides technical guidance and reports annually to Parliament on regulatory quality tools. An **Impact Assessment Independent Unit (IAIU)** supports the DAGL in reviewing *ex ante* and *ex post* evaluations. The IAIU is composed of external experts serving a 4-year term, selected through an open and competitive process. An **Impact Assessment Office in the Senate** conducts *ex post* evaluations of selected legislation. The **Committee on legislation in the Chamber of Deputies** checks the effectiveness of simplification principles in draft legislation. The **Council of State** checks quality of RIA and stakeholder engagement practices and evaluates regulatory policy.

Indicators of Regulatory Policy and Governance (iREG): Italy, 2018



Note: The more regulatory practices as advocated in the *OECD Recommendation on Regulatory Policy and Governance* a country has implemented, the higher its iREG score. The indicators on stakeholder engagement and RIA for primary laws only cover those initiated by the executive (88% of all primary laws in Italy).
Source: Indicators of Regulatory Policy and Governance Surveys 2014 and 2017, http://oe.cd/ireg.

Requirements to use regulatory management tools for EU-made laws: Italy

Stakeholder engagement		Regulatory impact assessment	
Development stage			
The government facilitates the engagement of domestic stakeholders in the European Commission's consultation process	Yes		
Negotiation stage			
Stakeholder engagement is required to define the negotiating position for EU directives/regulations	Yes	RIA is required to define the negotiating position for EU directives/regulations	Yes
Consultation is required to be open to the general public	Yes		
Transposition stage			
Stakeholder engagement is required when transposing EU directives	Yes	RIA is required when transposing EU directives	Yes
The same requirements and processes apply as for domestically made laws	Yes	The same requirements and processes for RIA apply as for domestically made laws	Yes
Consultation is required to be open to the general public	Yes	RIA includes a specific assessment of provisions added at the national level beyond those in the EU directives	Yes
		RIA distinguishes between impacts stemming from EU requirements and additional national implementation measures	Yes

Source: Indicators of Regulatory Policy and Governance Survey 2017, http://oe.cd/ireg.

Latvia

Overview and recent developments

There is no single document comprehensively articulating regulatory policy in Latvia. However, many particular elements of regulatory policy are firmly embedded in strategic documents of the government. The obligation to conduct regulatory impact assessment (RIA) was introduced in 2009. RIA is required for all draft legal acts including subordinate regulations submitted to the Cabinet. RIA should be prepared early in the policy-making process and undergoes public consultation with the draft law. The impacts assessed cover mostly financial, budgetary, and administrative costs. Quantification of impacts tends to be rare. There is a structured and systematic process for consulting with social and civil partners. Reviews of regulatory stock are mostly business-oriented. While there is no explicit programme on *ex post* reviews of regulation, the regulatory framework is being improved continuously through intensive co-operation with stakeholders.

Latvia should consider the introduction of a threshold test for the preparation of more in-depth impact analyses for draft legislation and policy documents and explore ways for improving the quantification of the impacts of draft legislation and policy documents, including through guidance and capacity development for cost-benefit analysis.

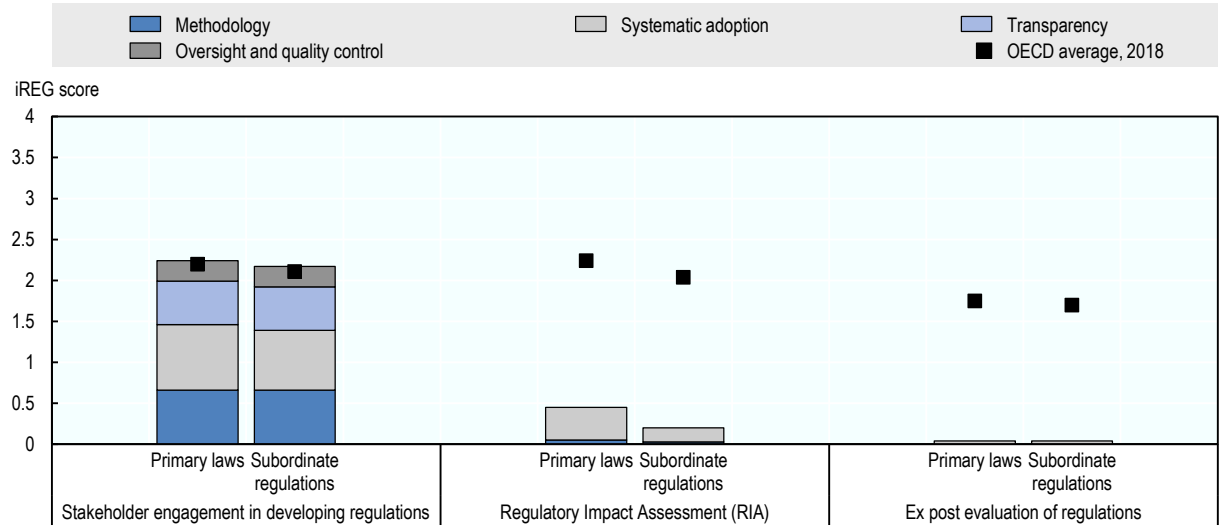
Institutional setup for regulatory oversight

The responsibility for co-ordinating regulatory policy and promoting regulatory quality is divided among the **Ministry of Justice** and the **State Chancellery**, and the Cross-Sectoral Co-ordination Centre (as concerns the development planning system) and Ministry of Environment Protection and Regional Development (for binding regulations of local governments). The Ministry of Economy plays a significant role in administrative simplification activities.

The Ministry of Justice mostly oversees legal quality of regulation which includes mainly compliance with other legal instruments. The Chancellery through its Legal Department focuses on compliance of each regulatory draft with the rules for drafting legislation, including the obligation to conduct impact assessment or requirements for stakeholder engagement. The Chancellery is also co-ordinating the development and application of uniform rules of regulatory drafting including the impact assessment guidelines.

The assessment of the Ministry of Justice and the State Chancellery is binding for other ministries. The ministry responsible for drafting the document revises the proposal if the document does not comply with the relevant requirements or if the RIA is based on insufficient or low-quality data.

Indicators of Regulatory Policy and Governance (iREG): Latvia, 2018



Notes: The more regulatory practices as advocated in the *OECD Recommendation on Regulatory Policy and Governance* a country has implemented, the higher its iREG score. The indicators on RIA for primary laws only cover those initiated by the executive (70% of all primary laws in Latvia).
Source: Indicators of Regulatory Policy and Governance Survey 2017, http://oe.cd/ireg.

Requirements to use regulatory management tools for EU-made laws: Latvia

Stakeholder engagement		Regulatory impact assessment	
Development stage			
The government facilitates the engagement of domestic stakeholders in the European Commission's consultation process	No		
Negotiation stage			
Stakeholder engagement is required to define the negotiating position for EU directives/regulations	Yes	RIA is required to define the negotiating position for EU directives/regulations	No
Consultation is required to be open to the general public	No		
Transposition stage			
Stakeholder engagement is required when transposing EU directives	Yes	RIA is required when transposing EU directives	Yes
The same requirements and processes apply as for domestically made laws	Yes	The same requirements and processes for RIA apply as for domestically made laws	Yes
Consultation is required to be open to the general public	Yes	RIA includes a specific assessment of provisions added at the national level beyond those in the EU directives	Yes
		RIA distinguishes between impacts stemming from EU requirements and additional national implementation measures	No

Source: Indicators of Regulatory Policy and Governance Survey 2017, http://oe.cd/ireg.

Lithuania

Overview and recent developments

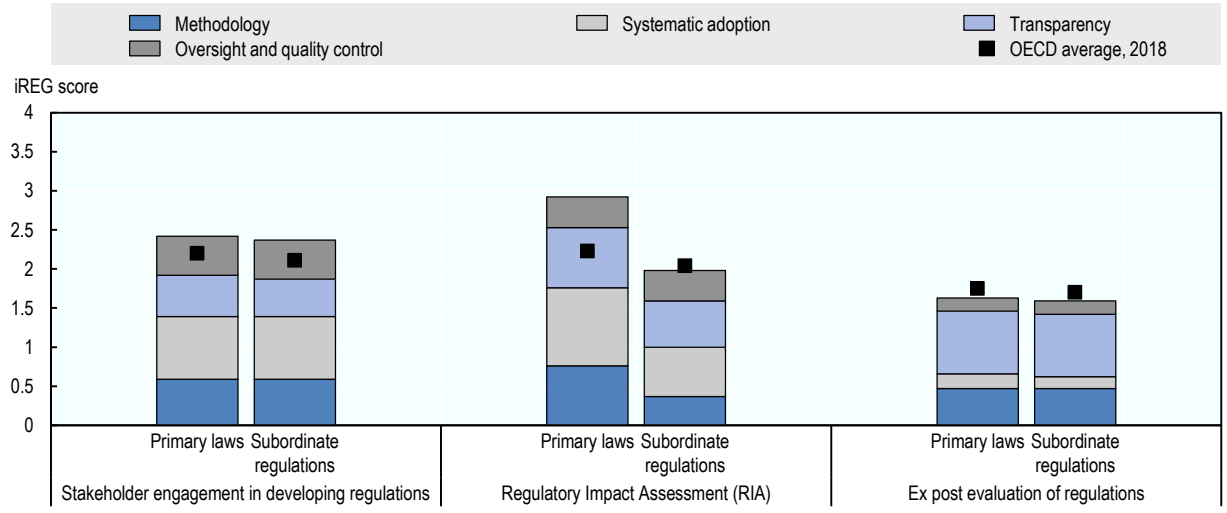
There is no single formal government regulatory policy in Lithuania, though some elements are embedded in several strategic documents. While impacts are required to be assessed for any legislative acts, RIA remains a largely formal exercise to justify choices already made, rarely based on data or analysis of alternative options. Around two-thirds of about 900 draft laws submitted to the *Seimas* every year are parliamentary drafts with similar requirements for conducting RIA and public consultations as for those developed by the executive, however, without any oversight. Consultations in the development of regulations are anchored in the administration and interaction between stakeholders and the government sometimes takes place before a decision to regulate is made. Yet consultations currently lack methodology and technical guidance.

A major part of the Lithuanian government's efforts focuses on administrative burden reduction, mainly for businesses. There are some general requirements to conduct monitoring and *ex post* reviews of existing regulations, and the government plans to introduce a pilot of more in-depth 'fitness checks'. Concerning regulatory enforcement and inspections reform, Lithuania is ahead of most of OECD countries. Lithuania could consider building on existing efforts for better co-ordination of regulatory policy by bringing the different elements of regulatory policy together in an integrated strategic plan and strengthening the role of the Government Office. It should also improve RIA processes, with a special focus on starting early in the regulation-making process and better quantification of regulatory impacts.

Institutional setup for regulatory oversight

The institutional responsibility for co-ordinating regulatory policy and promoting regulatory quality is spread across several institutions, with the main role attributed to the **Government Office**. Its co-ordination role is gradually being strengthened. It co-ordinates and supervises the law-making process when draft laws are initiated by the executive and is in charge of preparing the annual legislative programme. It monitors the overall quality of impact assessment and provides guidance and training. The **Ministry of Economy** co-ordinates initiatives in the field of administrative simplification for business, including licencing and business inspection reforms and administrative burden reduction plans. The Ministry of Interior is responsible for developing the administrative burden policy for citizens and public sector organisations. Once the draft law is submitted to Parliament, the Legal Department of **the Office of the *Seimas*** checks compliance of the draft with the laws which are already in effect and technical law-making requirements.

Indicators of Regulatory Policy and Governance (iREG): Lithuania, 2018



Note: The more regulatory practices as advocated in the *OECD Recommendation on Regulatory Policy and Governance* a country has implemented, the higher its iREG score. The indicators on stakeholder engagement and RIA for primary laws only cover those initiated by the executive (67.2% of all primary laws in Lithuania).
Source: Indicators of Regulatory Policy and Governance Survey 2017, http://oe.cd/ireg.

Requirements to use regulatory management tools for EU-made laws: Lithuania

Stakeholder engagement		Regulatory impact assessment	
Development stage			
The government facilitates the engagement of domestic stakeholders in the European Commission's consultation process	Yes		
Negotiation stage			
Stakeholder engagement is required to define the negotiating position for EU directives/regulations	No	RIA is required to define the negotiating position for EU directives/regulations	Yes
Consultation is required to be open to the general public	No		
Transposition stage			
Stakeholder engagement is required when transposing EU directives	Yes	RIA is required when transposing EU directives	Yes
The same requirements and processes apply as for domestically made laws	Yes	The same requirements and processes for RIA apply as for domestically made laws	Yes
Consultation is required to be open to the general public	Yes	RIA includes a specific assessment of provisions added at the national level beyond those in the EU directives	Yes
		RIA distinguishes between impacts stemming from EU requirements and additional national implementation measures	NA

Source: Indicators of Regulatory Policy and Governance Survey 2017, http://oe.cd/ireg.

Luxembourg

Overview and recent developments

Since 2015, Luxembourg has made some minor improvements to its regulatory management tools. Digital means of consultations are now undertaken in Luxembourg, albeit not systematically. Members of the public can now choose to participate in some consultations through a central government website in addition to ministry websites. Over time, it will be important to expand the usage of the central website to all regulatory proposals.

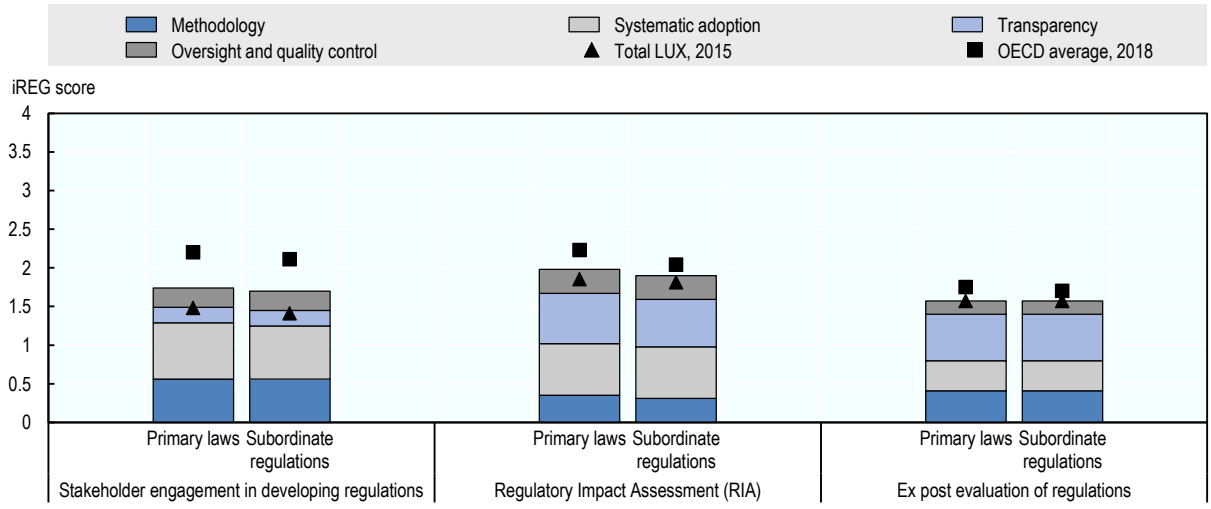
RIA is undertaken for all regulations in Luxembourg and takes the form of a checklist mainly focussing on administrative burdens and enforcement costs. . In order to enhance the usefulness of RIA, the analysis included in the impact assessments could be deepened and extended to other types of impacts and benefits of regulation. While Luxembourg currently refers to European Commission best practice instead of providing own guidance material, the limited current focus of RIA in Luxembourg does not reflect EC standards. Luxembourg may consider creating bespoke guidance material to enhance domestic support for regulatory policy.

Ex post evaluations have been undertaken in Luxembourg although they remain an inconsistently applied regulatory management tool. Putting in place an evaluation framework, including a clear methodology, could help to ensure that regulations remain fit for purpose.

Institutional setup for regulatory oversight

The **Ministry of the Civil Service and Administrative Reform** is the central oversight body responsible for quality control of regulatory management tools in Luxembourg. Its oversight functions apply to stakeholder engagement, RIA, and *ex post* evaluations; however it has no gatekeeper role with respect to any of these areas. It does however provide advice and guidance to ministries in the use of these regulatory management tools. It is also responsible for a range of other oversight functions including the evaluation of regulatory policy, identifying areas where regulation can be made effective, and co-ordination on regulatory policy. The **Council of State** is an arm's length body that is responsible for providing legal scrutiny of regulatory proposals. It has a gatekeeper function with the possibility of stopping a regulation from proceeding any further where it considers that certain legal criteria have not been met.

Indicators of Regulatory Policy and Governance (iREG): Luxembourg, 2018



Note: The more regulatory practices as advocated in the *OECD Recommendation on Regulatory Policy and Governance* a country has implemented, the higher its iREG score.
Source: Indicators of Regulatory Policy and Governance Surveys 2014 and 2017, http://oe.cd/ireg.

Requirements to use regulatory management tools for EU-made laws: Luxembourg

Stakeholder engagement		Regulatory impact assessment	
Development stage			
The government facilitates the engagement of domestic stakeholders in the European Commission's consultation process	No		
Negotiation stage			
Stakeholder engagement is required to define the negotiating position for EU directives/regulations	No	RIA is required to define the negotiating position for EU directives/regulations	No
Consultation is required to be open to the general public	No		
Transposition stage			
Stakeholder engagement is required when transposing EU directives	Yes	RIA is required when transposing EU directives	Yes
The same requirements and processes apply as for domestically made laws	Yes	The same requirements and processes for RIA apply as for domestically made laws	Yes
Consultation is required to be open to the general public	No	RIA includes a specific assessment of provisions added at the national level beyond those in the EU directives	No
		RIA distinguishes between impacts stemming from EU requirements and additional national implementation measures	No

Source: Indicators of Regulatory Policy and Governance Survey 2017, http://oe.cd/ireg.

Malta

Overview and recent developments

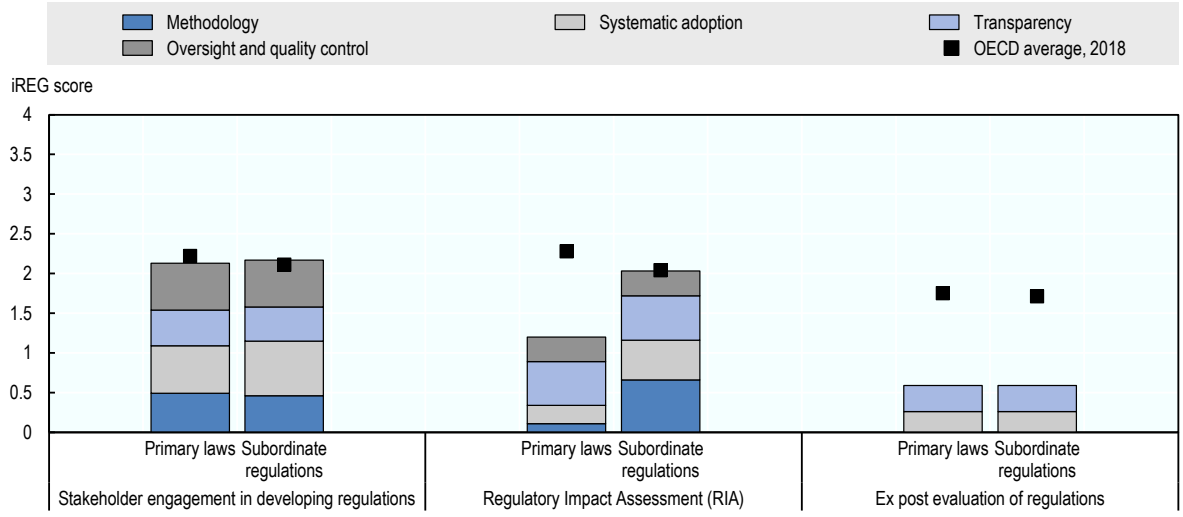
Since its first better regulation strategy introduced a decade ago, the Maltese government has put a strong emphasis on the improvement of the regulatory environment for businesses and citizens and the reduction of regulatory burdens. The "Small Business Act" (SBA), adopted in 2011 and revised in 2017, introduced a framework for *ex ante* impact assessment to be applied by ministries when developing regulations, including an SME-Test. RIA is however only formally obliged for subordinate regulations. Separately, the Maltese government has conducted several *ad hoc* reviews of existing laws and regulations in specific sectors aiming at reducing administrative burdens. However, Malta currently lacks a systematic approach towards reviewing whether laws and regulations achieved the intended policy goals, including a requirement to periodically evaluate existing regulations and a standardised methodology for *ex post* evaluation.

Stakeholder engagement is currently required for all subordinate regulations as part of the RIA process as well as for some primary laws in selected policy areas. Recent better regulation initiatives have been targeted at improving the accessibility of the regulatory process, for example through the introduction of a central portal for online consultations. Each online consultation is accompanied by a feedback report, summarizing the views of participants and providing feedback on the comments received. The transparency of the Maltese regulatory framework could be further strengthened by making RIAs available for consultations with stakeholders. Additionally, Malta could more systematically engage with stakeholders during the development of primary laws, specifically at an early stage, before a preferred regulatory decision has been identified.

Institutional setup for regulatory oversight

Competences for regulatory policy and regulatory reform are dispersed among multiple bodies in the centre of government and a couple of ministries. **The Office of the Parliamentary Secretary for Reforms, Citizenship and Simplification of Administrative Processes** is responsible for the government's better regulation and simplification agenda and its implementation in the wider public administration. The **Office of the Principal Permanent Secretary** conducts and co-ordinates simplification and bureaucracy reduction measures. The **Maltese Cabinet Office** provides oversight on the quality of RIAs by reviewing ministerial proposals and their accompanying RIAs against the criteria in the Small Business Act. **The Ministry for European Affairs and Equality** is responsible for developing standards and procedures for online consultations and overseeing their application. The **Ministry for Justice, Culture and Local Government** ensures the legal quality of draft laws and regulations.

Indicators of Regulatory Policy and Governance (iREG): Malta, 2018



Note: The more regulatory practices as advocated in the *OECD Recommendation on Regulatory Policy and Governance* a country has implemented, the higher its iREG score. The indicators on stakeholder engagement and RIA for primary laws only cover those initiated by the executive (97% of all primary laws in Malta).
Source: Indicators of Regulatory Policy and Governance Survey 2017, http://oe.cd/ireg.

Requirements to use regulatory management tools for EU-made laws: Malta

Stakeholder engagement		Regulatory impact assessment	
Development stage			
The government facilitates the engagement of domestic stakeholders in the European Commission's consultation process	Yes		
Negotiation stage			
Stakeholder engagement is required to define the negotiating position for EU directives/regulations	No	RIA is required to define the negotiating position for EU directives/regulations	Yes
Consultation is required to be open to the general public	No		
Transposition stage			
Stakeholder engagement is required when transposing EU directives	Yes	RIA is required when transposing EU directives	Yes
The same requirements and processes apply as for domestically made laws	Yes	The same requirements and processes for RIA apply as for domestically made laws	Yes
Consultation is required to be open to the general public	Yes	RIA includes a specific assessment of provisions added at the national level beyond those in the EU directives	Yes
		RIA distinguishes between impacts stemming from EU requirements and additional national implementation measures	No

Source: Indicators of Regulatory Policy and Governance Survey 2017, http://oe.cd/ireg.

Netherlands

Overview and recent developments

The Netherlands has a long-standing tradition of regulatory reform, with a strong emphasis on the reduction of burdens for business and citizens. This focus has largely remained in the centre of recent Better Regulation initiatives.

The Integraal Afwegingskader (IAK) combines existing requirements and instructions for *ex ante* impact assessment. While the core focus remains on measuring the costs of a regulation, the IAK has been gradually updated since 2015 by introducing assessments of the impact on innovation, SME's, gender equality and developing countries. Periodic *ex post* evaluation of the effectiveness and efficiency of regulations, mandatory for all primary laws since 2001, now includes an evaluation of regulatory burden and is complemented by reviews of administrative burden and compliance costs in specific sectors.

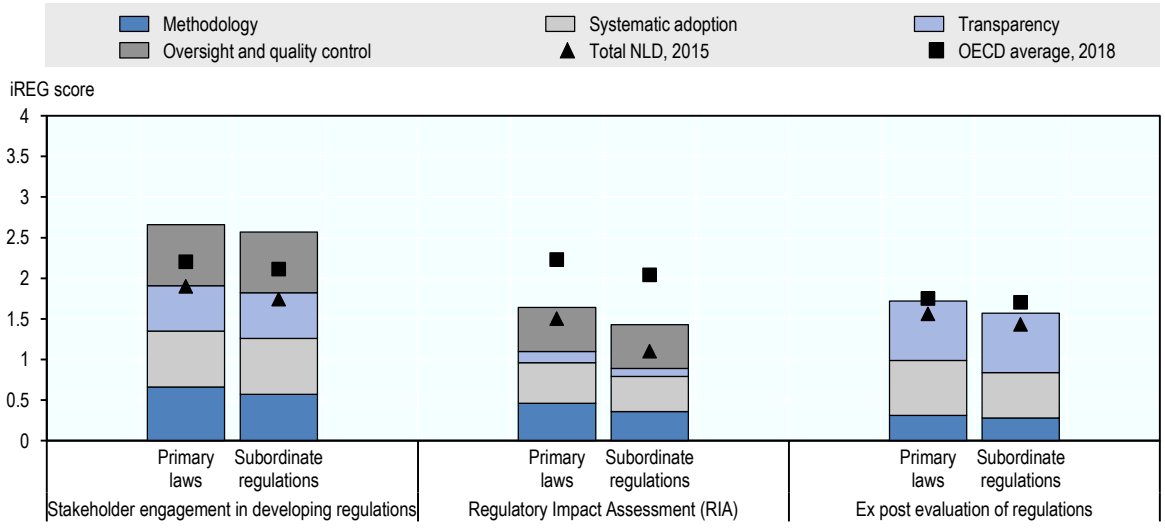
In recent years, the Netherlands placed a strong focus on accessibility and transparency of the regulatory process. For this purpose, a digital calendar has been launched, allowing the public to track the legislative process. Public consultation through the central interactive website has been further promoted and is more frequently used to consult on draft proposals as well as on policy documents informing about the nature of the problem and possible solutions. SME's can provide suggestions in the early stages of the development of a regulation as part of the recently introduced SME-Test.

Informing the public systematically in advance that a consultation is planned to take place could help to receive more input for public consultations. The Dutch RIA framework could be also further strengthened by extending the focus on regulatory burden towards a more systematic assessment of benefits and distributional effects of a regulation.

Institutional setup for regulatory oversight

Within the government, the **Unit for Judicial Affairs and Better Regulation Polic**y in the Ministry of Justice and Security is responsible for scrutinizing the overall compliance with the RIA framework. The **Unit for Regulatory Reform and ICT-policy** in the Ministry of Economic Affairs co-ordinates the program for regulatory burden reduction and provides oversight on the quality of regulatory burden assessments. The **Adviescollege Toetsing Regeldruk (ATR)**, located at arm's length from the government, advices ministries on the quality of the individual burden assessments at the early stage of the development of a proposal and can recommend improving the assessment if it is deemed inadequate. After approval of the Cabinet, the Council of State issues a formal opinion on the overall legal quality of a legislative proposal.

Indicators of Regulatory Policy and Governance (iREG): Netherlands, 2018



Note: The more regulatory practices as advocated in the *OECD Recommendation on Regulatory Policy and Governance* a country has implemented, the higher its iREG score. The indicators on stakeholder engagement and RIA for primary laws only cover those initiated by the executive (98% of all primary laws in the Netherlands).
Source: Indicators of Regulatory Policy and Governance Surveys 2014 and 2017, http://oe.cd/ireg.

Requirements to use regulatory management tools for EU-made laws: Netherlands

Stakeholder engagement		Regulatory impact assessment	
Development stage			
The government facilitates the engagement of domestic stakeholders in the European Commission's consultation process	No		
Negotiation stage			
Stakeholder engagement is required to define the negotiating position for EU directives/regulations	No	RIA is required to define the negotiating position for EU directives/regulations	No
Consultation is required to be open to the general public	No		
Transposition stage			
Stakeholder engagement is required when transposing EU directives	No	RIA is required when transposing EU directives	Yes
The same requirements and processes apply as for domestically made laws	No	The same requirements and processes for RIA apply as for domestically made laws	Yes
Consultation is required to be open to the general public	No	RIA includes a specific assessment of provisions added at the national level beyond those in the EU directives	Yes
		RIA distinguishes between impacts stemming from EU requirements and additional national implementation measures	No

Source: Indicators of Regulatory Policy and Governance Survey 2017, http://oe.cd/ireg.

Poland

Overview and recent developments

Poland has made a number of changes to its regulatory management practices since 2015, based on the new rules of work of the Council of Ministers, which was an activity within the Better Regulation Programme. The rules applying to the Council of Ministers which took effect in 2015 introduced public consultation as a general principle of the regulation making process, as well as requiring a consultation report. In the event that consultation does not take place, ministries are required to provide detailed justifications in Regulatory Impact Assessment (RIA). There has been a significant improvement in stakeholder engagement with the general public via the introduction of a central government website; and the government also maintains an active list of participants who have stated that they wish to be informed about regulatory proposals.

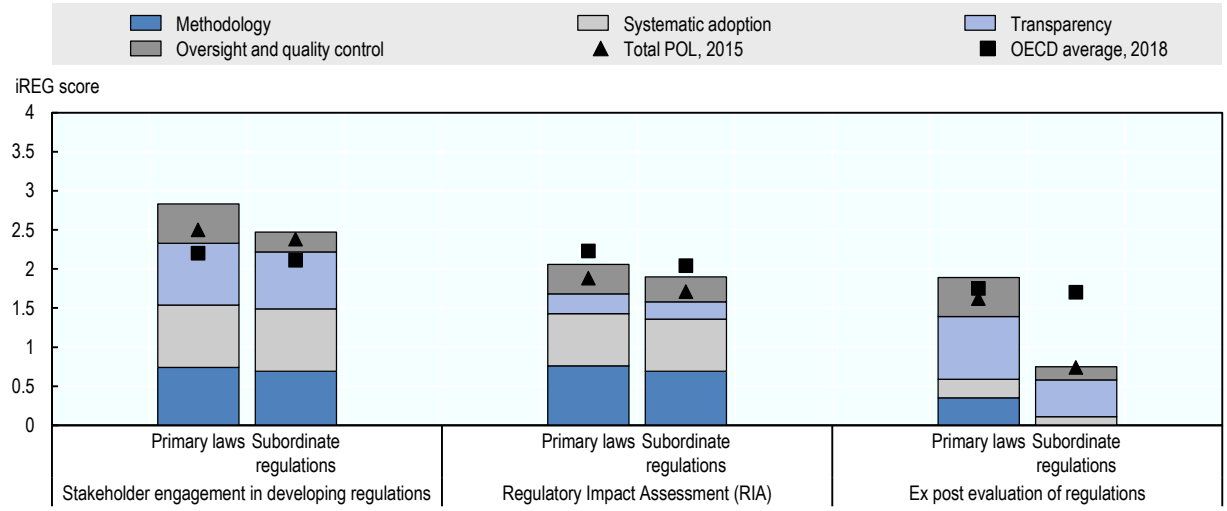
RIAs are required for all laws and regulations. Changes in 2014 have included the development of new guidelines on impact assessment and the dissemination of standardised RIA forms. *Ex post* evaluations can be required at the request of the Council of Ministers or subsidiary bodies, and further actions in the area of systematic regulatory review particularly focused on cutting red tape are planned to commence in 2018. Over time, *ex post* evaluations could be broadened beyond administrative burdens and focus more on the total social, economic, and environmental impacts of regulation.

Regulatory policy requirements for the executive do not apply to laws initiated by parliament, which constituted almost 40% of all laws passed on average between 2014 and 2016. Nevertheless RIAs are expected for all legislative initiatives introduced by the Senate based on standards set by the Council of Ministers.

Institutional setup for regulatory oversight

The **Chancellery of the Prime Minister** is responsible for the central oversight of regulatory management tools in Poland. The Ministry of Economic Development is responsible for the systematic improvement of regulation and the better regulation agenda in Poland. The **Coordinator of RIA and the Government Programming Board** are jointly responsible for providing quality control of stakeholder engagement and RIA, with the Board also being responsible for quality checking *ex post* evaluations. The **Legislative Council** is responsible for providing legal scrutiny on the quality of regulatory proposals. Parliamentary oversight is limited to legal scrutiny and is provided for both laws initiated in the executive and by parliament by the **Legislative Office in the Chancellery of the Senate**, and by both the **Bureau of Research and the Legislative Bureau in the Chancellery of the Sejm**, respectively.

Indicators of Regulatory Policy and Governance (iREG): Poland, 2018



Note: The more regulatory practices as advocated in the *OECD Recommendation on Regulatory Policy and Governance* a country has implemented, the higher its iREG score. The indicators on stakeholder engagement and RIA for primary laws only cover those initiated by the executive (57% of all primary laws in Poland).
Source: Indicators of Regulatory Policy and Governance Surveys 2014 and 2017, http://oe.cd/ireg.

Requirements to use regulatory management tools for EU-made laws: Poland

Stakeholder engagement		Regulatory impact assessment	
Development stage			
The government facilitates the engagement of domestic stakeholders in the European Commission's consultation process	Yes		
Negotiation stage			
Stakeholder engagement is required to define the negotiating position for EU directives/regulations	Yes	RIA is required to define the negotiating position for EU directives/regulations	Yes
Consultation is required to be open to the general public	No		
Transposition stage			
Stakeholder engagement is required when transposing EU directives	Yes	RIA is required when transposing EU directives	Yes
The same requirements and processes apply as for domestically made laws	Yes	The same requirements and processes for RIA apply as for domestically made laws	Yes
Consultation is required to be open to the general public	Yes	RIA includes a specific assessment of provisions added at the national level beyond those in the EU directives	No
		RIA distinguishes between impacts stemming from EU requirements and additional national implementation measures	No

Source: Indicators of Regulatory Policy and Governance Survey 2017, http://oe.cd/ireg.

Portugal

Overview and recent developments

In March 2017 through Resolution n. 44, the Council of Ministers took key steps in installing RIA in Portugal. Under its current implementation, the so-called Legislative Impact Analysis requires policy makers to qualitatively describe benefits and to quantify the impact of new regulations on businesses. It also includes an SME Test and a competition impact assessment. The Technical Unit for Legislative Impact Assessment (UTAIL), was established to provide oversight and support for the new RIA. Since June 2018, ministries are required to assess legislative impacts on citizens and as of 2019 impacts on public administration.

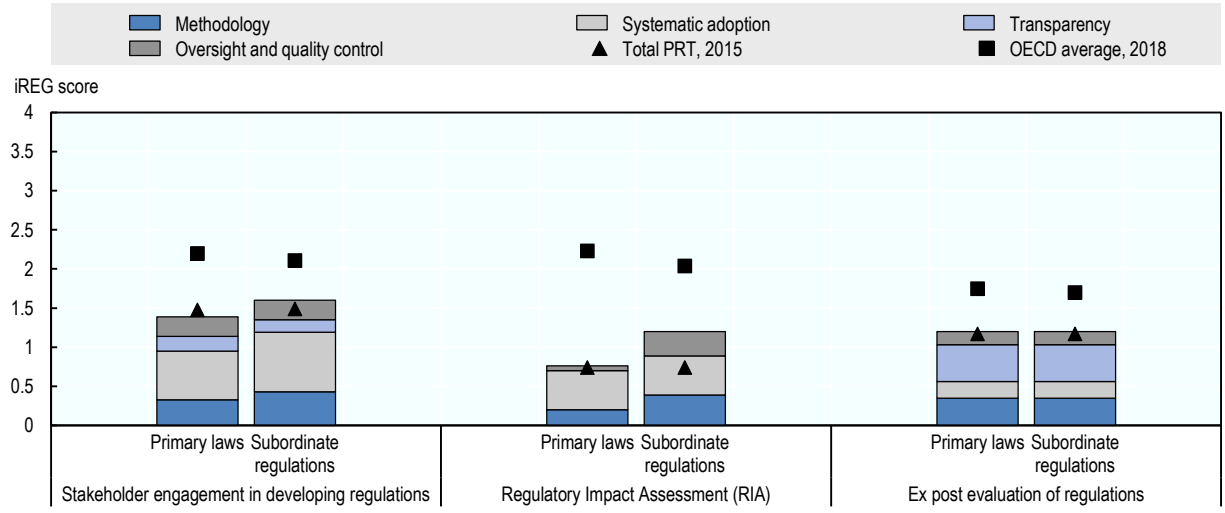
Although the role of RIA has expanded, it is not yet used in consultation with stakeholders. Stakeholders often only have a chance to comment when there is a draft regulation. Portugal could approach stakeholders earlier and before a preferred option is selected. A RIA could also be made available to stakeholders to support discussions.

In 2016, Portugal updated its administrative simplification programme from the Simplex to the Simplex+. The programme centres on the measures that the public service commits to implement within a year to simplify the life of citizens and companies. A team criss-crossed the country over four months to gather feedback, interviewing 2,000 citizens and business and holding special forums within the public sector. A key factor supporting the success of Simplex+ is the thorough follow-up and monitoring. Members of the public can submit suggestions at any time about administrative processes. Portugal could consider introducing "in-depth" reviews in particular sectors or policy areas.

Institutional setup for regulatory oversight

To support the implementation of RIA, the Council of Ministers created the **Technical Unit for Legislative Impact Assessment (UTAIL)** within the Legal Centre of the Presidency of the Council of Ministers (CEJUR). UTAIL acts as a supervising body that supports the implementation of RIA. It develops the impact assessment methodology, gives technical support, provides training to the Ministries and other public administrative bodies and produces and reviews reports for each impact assessment analyses. **The Agency for Administrative Modernization (AMA)** is a public institute under indirect government administration. The AMA promotes public administration modernisation, through administrative simplification, namely through the evaluation of administrative burdens of Simplex+ projects; the research and the dissemination of good practices in administrative and regulatory simplification; and contributing to the simplification environment.

Indicators of Regulatory Policy and Governance (iREG): Portugal, 2018



Note: The more regulatory practices as advocated in the *OECD Recommendation on Regulatory Policy and Governance* a country has implemented, the higher its iREG score. The indicators on stakeholder engagement and RIA for primary laws only cover those initiated by the executive (80% of all primary laws in Portugal).
Source: Indicators of Regulatory Policy and Governance Surveys 2014 and 2017, http://oe.cd/ireg.

Requirements to use regulatory management tools for EU-made laws: Portugal

Stakeholder engagement		Regulatory impact assessment	
Development stage			
The government facilitates the engagement of domestic stakeholders in the European Commission's consultation process	No		
Negotiation stage			
Stakeholder engagement is required to define the negotiating position for EU directives/regulations	No	RIA is required to define the negotiating position for EU directives/regulations	No
Consultation is required to be open to the general public	No		
Transposition stage			
Stakeholder engagement is required when transposing EU directives	No	RIA is required when transposing EU directives	Yes
The same requirements and processes apply as for domestically made laws	No	The same requirements and processes for RIA apply as for domestically made laws	Yes
Consultation is required to be open to the general public	No	RIA includes a specific assessment of provisions added at the national level beyond those in the EU directives	Yes
		RIA distinguishes between impacts stemming from EU requirements and additional national implementation measures	No

Source: Indicators of Regulatory Policy and Governance Survey 2017, http://oe.cd/ireg.

Romania

Overview and recent developments

Romania has gradually developed its regulatory policy since the early 2000s. While Law 24/2000 on drafting legal acts set out an initial obligation to identify the impacts of draft regulations, the requirements for RIA have been further refined in Government Decision no. 1361 issued in 2006. According to these provisions, all regulations are required to be accompanied by an explanatory note, describing the rationale and assessing the impacts of the draft proposal. Additionally, Romania introduced a template for assessing the impacts during the development of public policy initiatives, including regulatory initiatives, which also assesses alternative options.

Nevertheless, challenges in the implementation of RIA remain. In practice, the quality of explanatory notes varies and the actual assessment of impacts is not always conducted. Romania has improved its guidance in 2015 and is currently developing proportionality criteria so as to better focus efforts on regulatory proposals with significant impacts. Romania should strengthen its oversight of RIA to ensure that RIA can effectively inform policy makers on the costs and benefits of different policy options.

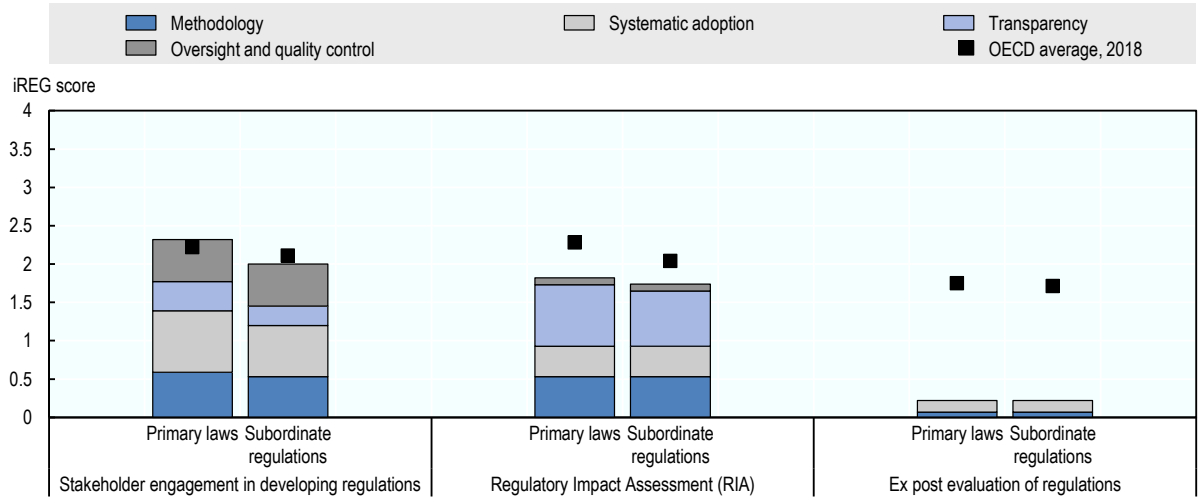
Regarding stakeholder engagement, Law no. 52/2003 requires ministries to publish all regulations for comments on their websites. Romania recently established a central consultation portal where all consultations of ministries are listed. However, the minimum period for submitting comments is limited to ten days and no feedback on the outcomes of consultations is currently provided to participants.

Romania lacks a systematic approach for reviewing existing regulations. *Ex post* evaluation is largely conducted on an *ad hoc* basis by ministries and there is neither methodological guidance nor a requirement for the periodical review of existing regulations.

Institutional setup for regulatory oversight

Located in the General Secretariat of the Government, the **Department for Coordinating Policies and Priorities (DCPP)** is responsible for the implementation of the Romanian Better Regulation Strategy and the development of the Romanian RIA system. Romania does not have central oversight of the quality of RIA in place. Some ministries, such as the Ministry of Finance or the Ministry of Justice, review specific sections of explanatory notes as part the endorsement procedure of regulations. The **Ministry for Public Consultation and Social Dialogue** is responsible for the development of the central consultation platform as well as for monitoring and evaluating the consultation process.

Indicators of Regulatory Policy and Governance (iREG): Romania 2018



Note: The more regulatory practices as advocated in the *OECD Recommendation on Regulatory Policy and Governance* a country has implemented, the higher its iREG score. The indicators on stakeholder engagement and RIA for primary laws only cover those initiated by the executive (69% of all primary laws in Romania).
Source: Indicators of Regulatory Policy and Governance Survey 2017, http://oe.cd/ireg.

Requirements to use regulatory management tools for EU-made laws: Romania

Stakeholder engagement		Regulatory impact assessment	
Development stage			
The government facilitates the engagement of domestic stakeholders in the European Commission's consultation process	Yes		
Negotiation stage			
Stakeholder engagement is required to define the negotiating position for EU directives/regulations	No	RIA is required to define the negotiating position for EU directives/regulations	No
Consultation is required to be open to the general public	No		
Transposition stage			
Stakeholder engagement is required when transposing EU directives	Yes	RIA is required when transposing EU directives	No
The same requirements and processes apply as for domestically made laws	Yes	The same requirements and processes for RIA apply as for domestically made laws	No
Consultation is required to be open to the general public	Yes	RIA includes a specific assessment of provisions added at the national level beyond those in the EU directives	No
		RIA distinguishes between impacts stemming from EU requirements and additional national implementation measures	No

Source: Indicators of Regulatory Policy and Governance Survey 2017, http://oe.cd/ireg.

Slovak Republic

Overview and recent developments

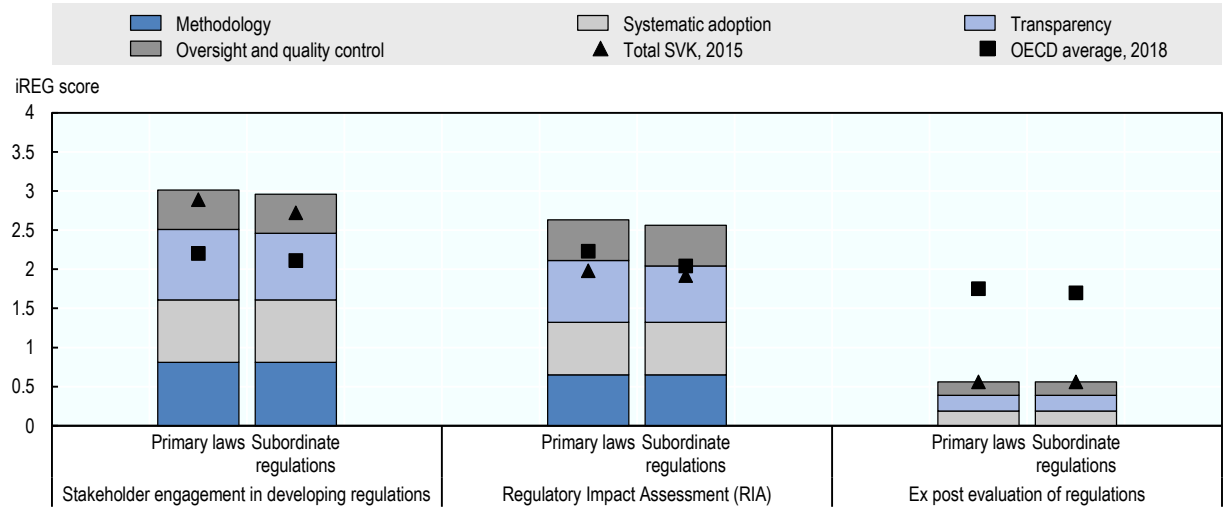
The Slovak Republic has made significant progress in implementing some of the regulatory management tools. The *RIA 2020 – Better Regulation Strategy* represents a comprehensive approach towards a whole-of-government regulatory policy focusing, among other issues, on improving bot *ex ante* and *ex post* evaluation of regulations. The obligation to conduct regulatory impact assessments according to the "Unified Methodology for the Assessment of Selected Impacts" has been in place since 2008 with reforms introducing strong methodology for assessing economic, social and environmental impacts including an SME Test and impacts on innovation in 2015. Despite these improvements, in many cases Slovak ministries still struggle with the quantification of wider impacts, focusing mainly on budgetary impacts and, to a lesser extent, impacts on business. Procedures for public consultations in the later stage of the regulation-making process are well developed, with automatic publication of all legislative documents on the government portal. The 2015 reforms made early-stage consultations more prominent, especially those with business associations. *Ex post* reviews of existing regulations have so far focused mostly on administrative burdens, however, the *RIA 2020 Strategy* contains plans for more comprehensive reviews.

Despite improvements caused by creating the Permanent Committee, Slovakia would benefit from further strengthening regulatory oversight, making one body close to the centre of government responsible for evaluating integrated impacts rather than spreading the responsibility across several ministries, through members of one Committee. There is a need to improve policies on *ex post* reviews of regulations. Systemic use of targeted, in-depth reviews would be advisable. The RIA 2020 strategy represents a positive step forward.

Institutional setup for regulatory oversight

The **Permanent Working Committee of the Legislative Council of the Slovak Republic** at the Ministry of Economy established in 2015 is responsible for overseeing the quality of regulatory impact assessments. Several ministries (Ministry of Economy as a co-ordinator, Ministry of Finance, Ministry of Labour and Social Affairs, Ministry of Environment, Ministry of the Interior and Deputy Prime Minister's Office for Investments and Informatization) are represented in the Committee as well as the Government Office, and the Slovak Business Agency. They share competencies for checking the quality of RIAs with each one focusing on their area of competences. The **Legislative Council of the Government** as such is an advisory body focusing on legal quality of government regulations.

Indicators of Regulatory Policy and Governance (iREG): Slovak Republic, 2018



Note: The more regulatory practices as advocated in the *OECD Recommendation on Regulatory Policy and Governance* a country has implemented, the higher its iREG score. The indicators on stakeholder engagement and RIA for primary laws only cover those initiated by the executive (98% of all primary laws in the Slovak Republic

Source: Indicators of Regulatory Policy and Governance Surveys 2014 and 2017, http://oe.cd/ireg.

Requirements to use regulatory management tools for EU-made laws: Slovak Republic

Stakeholder engagement		Regulatory impact assessment	
Development stage			
The government facilitates the engagement of domestic stakeholders in the European Commission's consultation process	Yes		
Negotiation stage			
Stakeholder engagement is required to define the negotiating position for EU directives/regulations	Yes	RIA is required to define the negotiating position for EU directives/regulations	Yes
Consultation is required to be open to the general public	Yes		
Transposition stage			
Stakeholder engagement is required when transposing EU directives	Yes	RIA is required when transposing EU directives	Yes
The same requirements and processes apply as for domestically made laws	Yes	The same requirements and processes for RIA apply as for domestically made laws	Yes
Consultation is required to be open to the general public	Yes	RIA includes a specific assessment of provisions added at the national level beyond those in the EU directives	No
		RIA distinguishes between impacts stemming from EU requirements and additional national implementation measures	No

Source: Indicators of Regulatory Policy and Governance Survey 2017, http://oe.cd/ireg.

Slovenia

Overview and recent developments

Slovenia has adopted a whole-of-government framework for regulatory policy, which is set out in a number of government resolutions and documents, such as the Resolution on Legislative Regulation and the Rules of Procedure of the Government. RIA and stakeholder engagement are compulsory and are almost always conducted in practice for primary laws in Slovenia. Stakeholder engagement is often done for a short period and RIA often includes only a qualitative assessment, although the situation has improved modestly. Slovenia could strengthen oversight of these regulatory policy tools to ensure that they are used effectively.

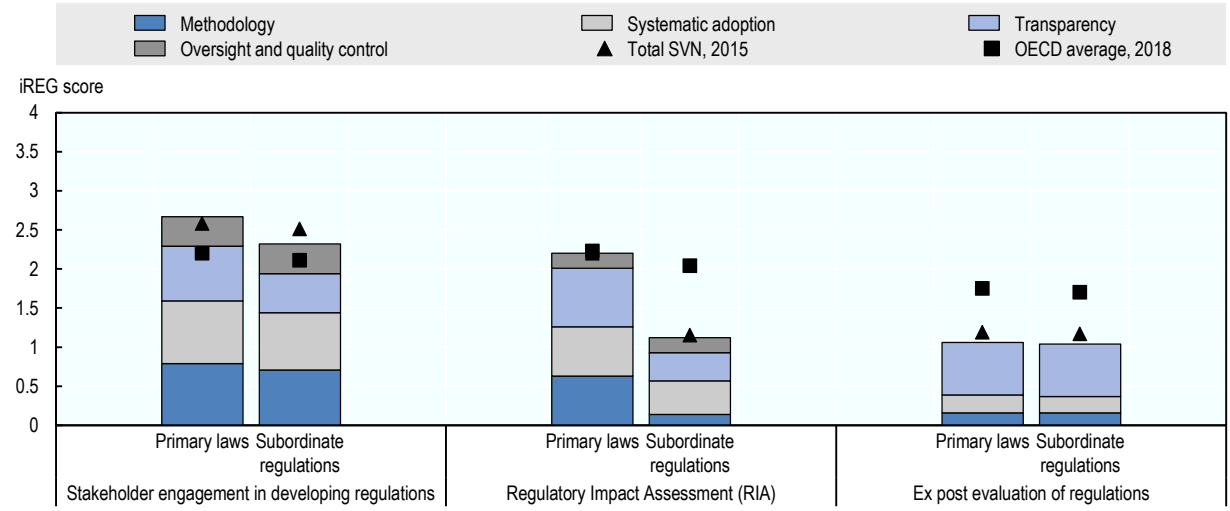
Slovenia was an early adopter of the Standard Cost Model (SCM), and has focused *ex post* evaluation efforts on reducing administrative burdens for businesses ever since. Now, Slovenia has consolidated regulatory reforms through the "Single document" to target particular irritants and has also initiated selected sectoral reforms.

The new Modular Environment for the Preparation of Electronic Documents (MOPED) is currently in the implementation phase. It will simplify the preparation of documents in the legislative process. Within MOPED, all stages of the legislative process will be standardised, forming an integrated legislative cycle. In addition, Slovenia introduced a Small and Medium Enterprise Test (SME Test) to help ministries estimate regulatory costs to businesses.

Institutional setup for regulatory oversight

The **General Secretariat of the Government** is responsible for preparation of the Legislative Work Programme, ensures that government material conforms to the Rules of Procedure of the Government and informs the proposer if something is missing, such as a RIA. The General Secretariat may also require the proposer to submit legislative material to working groups or established government councils, if the working group or council has not yet considered the proposal. Oversight of many regulatory policy tools is primarily within the **Ministry of Public Administration** (MPA), which checks the accuracy of the administrative cost impact. The MPA also draws attention to the barriers still left in the proposal and provides training in regulatory policy. Proposers of regulation engage with the MPA through interministerial consultation. The **Government Office of Legislation** (GoL) examines law proposals by the Government and those acts for which the National Assembly seeks the opinion of the Government. If the GoL gives a negative opinion on a proposal, the ministry must amend it.

Indicators of Regulatory Policy and Governance (iREG): Slovenia, 2018



Note: The more regulatory practices as advocated in the *OECD Recommendation on Regulatory Policy and Governance* a country has implemented, the higher its iREG score. The indicators on stakeholder engagement and RIA for primary laws only cover those initiated by the executive (93% of all primary laws in Slovenia).
Source: Indicators of Regulatory Policy and Governance Surveys 2014 and 2017, http://oe.cd/ireg.

Requirements to use regulatory management tools for EU-made laws: Slovenia

Stakeholder engagement		Regulatory impact assessment	
Development stage			
The government facilitates the engagement of domestic stakeholders in the European Commission's consultation process	Yes		
Negotiation stage			
Stakeholder engagement is required to define the negotiating position for EU directives/regulations	Yes	RIA is required to define the negotiating position for EU directives/regulations	Yes
Consultation is required to be open to the general public	Yes		
Transposition stage			
Stakeholder engagement is required when transposing EU directives	Yes	RIA is required when transposing EU directives	Yes
The same requirements and processes apply as for domestically made laws	Yes	The same requirements and processes for RIA apply as for domestically made laws	Yes
Consultation is required to be open to the general public	Yes	RIA includes a specific assessment of provisions added at the national level beyond those in the EU directives	Yes
		RIA distinguishes between impacts stemming from EU requirements and additional national implementation measures	No

Source: Indicators of Regulatory Policy and Governance Survey 2017, http://oe.cd/ireg.

Spain

Overview and recent developments

Spain is gradually broadening its Better Regulation agenda from an initial focus on administrative simplification to stakeholder engagement and evaluation. A new user-friendly website has been recently set up by the Spanish Government (http://transparencia.gob.es) which includes the annual regulatory planning agenda for primary and subordinate regulations, as well as a centralised platform to provide access to public consultations. Still, stakeholder engagement is not yet undertaken on a systematic basis in Spain.

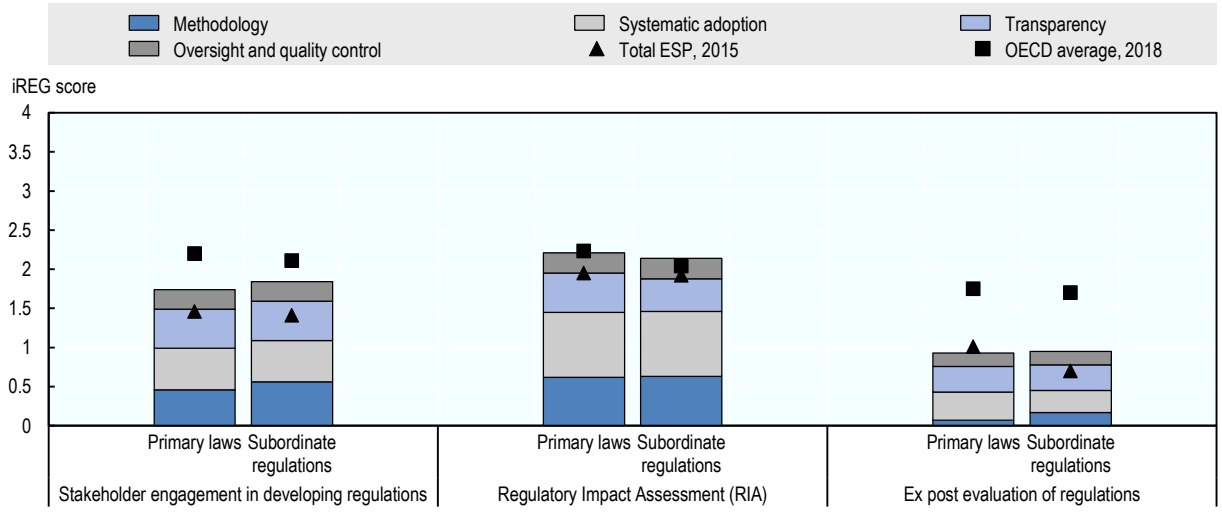
RIAs are required for all regulations in Spain. New evaluation procedures were issued in October 2017, introducing additional requirements to systematically consider impacts of regulatory drafts on competition and on small and medium-sized enterprises, as well as new thresholds for the conduct of *ex post* evaluations. A new oversight body, the Office on Regulatory Coordination and Quality was established in 2017 and has begun its activities in 2018.

An update from the 2009 RIA guidelines would provide useful support to regulators, all the more in the conduct of the new RIA procedures. The guidance could be further developed by providing advice on methods of data collection as well as providing clear assessment methodologies. In this regard, Spain would also benefit from developing standard evaluation techniques for *ex post* evaluation since the *ex post* review system is still in its early stages and not yet implemented systematically.

Institutional setup for regulatory oversight

The **Office on Regulatory Coordination and Quality** within the Ministry of the Presidency, Relations with the Parliament and Equality is specifically mandated to oversee the implementation of Better Regulation requirements, namely by examining the content of RIAs and *ex post* evaluations. The **Ministry of Territorial Policy and Public Service** is responsible for promotion and follow-up of simplification of administrative burdens and public consultation and participation. Together with the **Ministry of Economy and Enterprise** it scrutinises the quality of different aspects of RIAs. These oversight functions were taken over from the Ministry of Finance and Public Service in the recent change of Government in 2018. The **Council of State** is responsible for assessing the legality of regulations and the process they were developed with, efficiency of the administration in achieving its goals and scrutinising the legal quality of subordinate regulations or primary laws initiated by the executive.

Indicators of Regulatory Policy and Governance (iREG): Spain, 2018



Note: The more regulatory practices as advocated in the *OECD Recommendation on Regulatory Policy and Governance* a country has implemented, the higher its iREG score. The indicators on stakeholder engagement and RIA for primary laws only cover those initiated by the executive (93% of all primary laws in Spain).
Source: Indicators of Regulatory Policy and Governance Surveys 2014 and 2017, http://oe.cd/ireg.

Requirements to use regulatory management tools for EU-made laws: Spain

Stakeholder engagement		Regulatory impact assessment	
Development stage			
The government facilitates the engagement of domestic stakeholders in the European Commission's consultation process	No		
Negotiation stage			
Stakeholder engagement is required to define the negotiating position for EU directives/regulations	No	RIA is required to define the negotiating position for EU directives/regulations	No
Consultation is required to be open to the general public	No		
Transposition stage			
Stakeholder engagement is required when transposing EU directives	Yes	RIA is required when transposing EU directives	Yes
The same requirements and processes apply as for domestically made laws	Yes	The same requirements and processes for RIA apply as for domestically made laws	Yes
Consultation is required to be open to the general public	Yes	RIA includes a specific assessment of provisions added at the national level beyond those in the EU directives	Yes
		RIA distinguishes between impacts stemming from EU requirements and additional national implementation measures	No

Source: Indicators of Regulatory Policy and Governance Survey 2017, http://oe.cd/ireg.

Sweden

Overview and recent developments

Simplification remains a cornerstone of Sweden's regulatory policy. In the 2017 budget, simplification efforts focus on two areas: "Better service" and "More fit-for-purpose regulations". The government will monitor "Better Service" efforts against how much easier and faster it becomes to submit information and receive a response. For the area "More fit-for-purpose regulations", the objective is for regulation to promote economic growth and to reduce regulatory compliance costs for businesses.

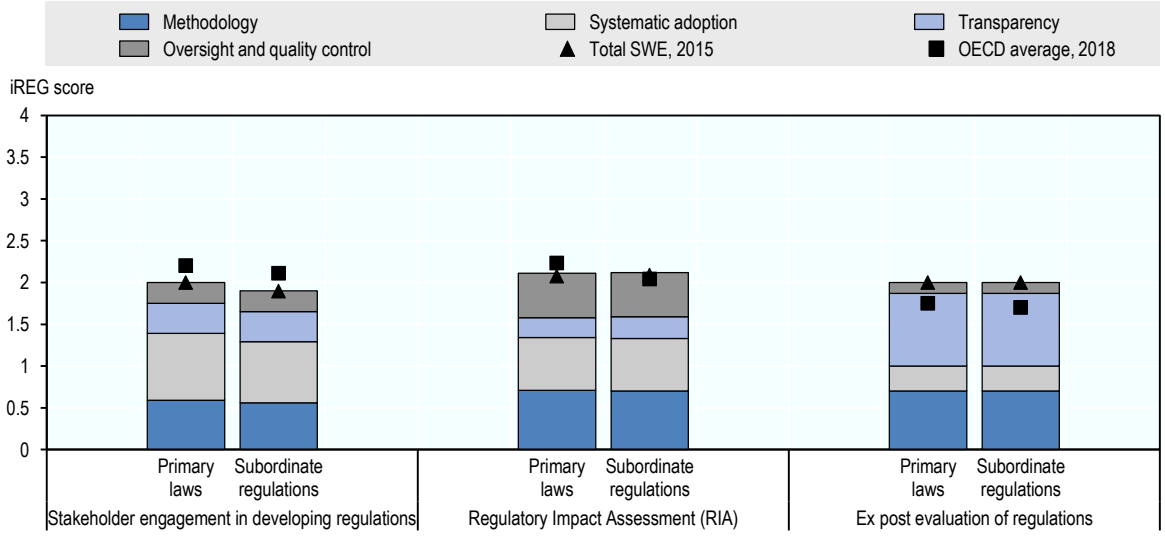
Ex ante evaluation is required for all primary laws and subordinate regulations by the 2007 Ordinance on Impact Analysis of Regulation. *Ex post* evaluation is normally conducted *ad hoc* by a ministry, government agency, or by a committee of inquiry. Individuals or interest groups can also make suggestions to conduct *ex post* evaluations by sending proposals directly to the responsible ministry or government agency. Sweden could consider expanding *ex post* evaluation through carrying out comprehensive in-depth reviews in particular sectors or policy areas.

Stakeholder engagement is deeply engrained into the law-making process in Sweden. One of the four fundamental laws of the Swedish Constitution requires the government to engage with stakeholders when formulating government instruments. When a committee of inquiry is appointed to investigate an issue, it normally includes a mix of policy makers, experts, and politicians, enabling consultation early in the process. The committee analyses and evaluates the proposal. The final report is sent to relevant stakeholders for consideration, before the joint draft procedure continues within the Government Offices. Ministries usually create a new webpage for each consultation. Sweden could introduce a central government portal to make it easier for stakeholders to find and participate in consultations as early in the process as possible.

Institutional setup for regulatory oversight

The **Swedish Better Regulation Council** was established in 2008, formally as an independent committee of inquiry appointed by the Government and since 2015 as a permanent structure. Its secretariat is located within the Swedish Agency for Economic and Regional Growth. The **Swedish Agency for Economic and Regional Growth** is responsible for methodological development, guidance and training in regulatory policy tools. The SAERG also develops and proposes simplifications measures, participates in international activities aimed at simplifying regulation for businesses, and promotes awareness among other government agencies of how businesses are affected by enforcement of regulation. An opinion from the **Legislative Council** in Sweden should normally be obtained before the parliament decides to adopt a law.

Indicators of Regulatory Policy and Governance (iREG): Sweden, 2018



Note: The more regulatory practices as advocated in the *OECD Recommendation on Regulatory Policy and Governance* a country has implemented, the higher its iREG score.
Source: Indicators of Regulatory Policy and Governance Surveys 2014 and 2017, http://oe.cd/ireg.

Requirements to use regulatory management tools for EU-made laws: Sweden

Stakeholder engagement		Regulatory impact assessment	
Development stage			
The government facilitates the engagement of domestic stakeholders in the European Commission's consultation process	Yes		
Negotiation stage			
Stakeholder engagement is required to define the negotiating position for EU directives/regulations	No	RIA is required to define the negotiating position for EU directives/regulations	No
Consultation is required to be open to the general public	No		
Transposition stage			
Stakeholder engagement is required when transposing EU directives	Yes	RIA is required when transposing EU directives	Yes
The same requirements and processes apply as for domestically made laws	Yes	The same requirements and processes for RIA apply as for domestically made laws	No
Consultation is required to be open to the general public	Yes	RIA includes a specific assessment of provisions added at the national level beyond those in the EU directives	Yes
		RIA distinguishes between impacts stemming from EU requirements and additional national implementation measures	Yes

Source: Indicators of Regulatory Policy and Governance Survey 2017, http://oe.cd/ireg.

United Kingdom

Overview and recent development

The United Kingdom continues to invest in its regulatory policy system, with a particular focus on business. UK government departments regularly conduct post implementation reviews, in particular for all measures with an impact on business following the introduction of the Small Business, Enterprise and Employment Act in 2015. The government also established over the last years the Business Impact Target programme and the Cutting Red Tape reviews programme to reduce regulatory costs for business.

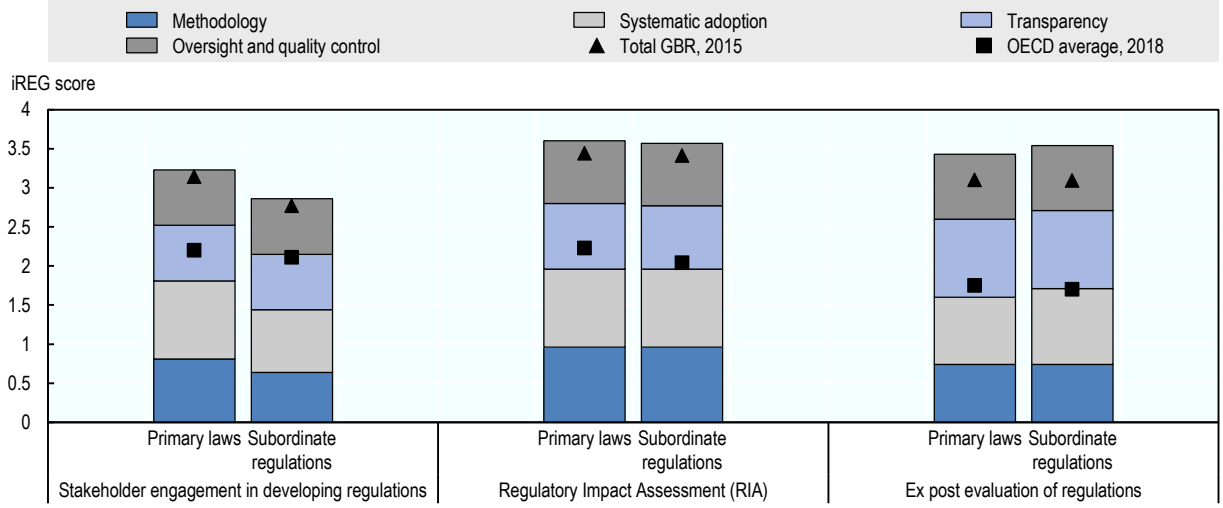
Consultations are conducted for all regulations in the United Kingdom. To provide for a more proportionate and targeted approach, the Cabinet Office published a revised set of consultation principles. With the "dialogue app" an innovative form of stakeholder engagement on modern employment practices has been introduced. To enhance the accessibility of these consultations, minimum consultation period with the general public could be considered. In an effort to identify innovation-friendly regulatory approaches, the government's Medicines and Healthcare Products Regulatory Agency's Innovation Office provides a single point of access to free regulatory advice for organisations wishing to introduce new products and the Financial Conduct Authority's Regulatory Sandbox allows firms to undertake live testing of innovative products or services.

The United Kingdom continues to place emphasis on evidence-based policy making. A preliminary and final stage RIA that takes into account stakeholder comments are carried out for all regulations except for deregulatory and low-cost measures, which are eligible for a fast track procedure. Recently, initial review notices have been introduced to alert regulators at an early stage if there are concerns with the quality of the RIA to allow for enough time for improvement. The United Kingdom may benefit from extending the focus of its current regulatory policy agenda on business on other elements important for inclusive growth.

Institutional setup for regulatory oversight

The **Regulatory Policy Committee** (RPC) is a non-departmental advisory body responsible for providing the government with external, independent scrutiny of evidence and analysis supporting new regulatory proposals in RIAs. It also has a role to scrutinise the quality of *ex post* evaluations of legislation. The **Better Regulation Executive** located within the Department for Business, Energy & Industrial Strategy is responsible for better regulation policy and is the lead unit in the UK government for promoting and delivering changes to the regulatory policy framework. The **National Audit Office** reports on the effectiveness of the regulatory policy framework as a whole by conducting value-for-money studies. Parliamentary bodies scrutinise draft laws for legal quality and identify areas of policy where regulation can be made more effective.

Indicators of Regulatory Policy and Governance (iREG): United Kingdom, 2018



Note: The more regulatory practices as advocated in the *OECD Recommendation on Regulatory Policy and Governance* a country has implemented, the higher its iREG score. The indicators on stakeholder engagement and RIA for primary laws only cover those initiated by the executive (71% of all primary laws in the UK).
Source: Indicators of Regulatory Policy and Governance Surveys 2014 and 2017, http://oe.cd/ireg.

Requirements to use regulatory management tools for EU-made laws: United Kingdom

Stakeholder engagement		Regulatory impact assessment	
Development stage			
The government facilitates the engagement of domestic stakeholders in the European Commission's consultation process	Yes		
Negotiation stage			
Stakeholder engagement is required to define the negotiating position for EU directives/regulations	No	RIA is required to define the negotiating position for EU directives/regulations	No
Consultation is required to be open to the general public	No		
Transposition stage			
Stakeholder engagement is required when transposing EU directives	Yes	RIA is required when transposing EU directives	Yes
The same requirements and processes apply as for domestically made laws	Yes	The same requirements and processes for RIA apply as for domestically made laws	Yes
Consultation is required to be open to the general public	Yes	RIA includes a specific assessment of provisions added at the national level beyond those in the EU directives	Yes
		RIA distinguishes between impacts stemming from EU requirements and additional national implementation measures	Yes

Source: Indicators of Regulatory Policy and Governance Survey 2017, http://oe.cd/ireg.

Annex A. Country information on shares of national laws initiated by parliament

	Proportion of all national primary laws initiated by parliament (%)
Austria	22%
Belgium	21%
Bulgaria	58%
Croatia	9%
Cyprus	23%
Czech Republic	41%
Denmark	1%
Estonia	14%
Finland	0%
France	23%
Germany	10%
Greece	0%
Hungary	24%
Ireland	2%
Italy	12%
Latvia	30%
Lithuania	33%
Luxembourg	10%
Malta	5%
Netherlands	2%
Poland	40%
Portugal	20%
Romania	18%
Slovak Republic	2%
Slovenia	7%
Spain	7%
Sweden	0%
United Kingdom	23%

Notes: Data are self-reported by participating countries. The proportion represents an average of the laws initiated by parliament in the years 2014 to 2016.
Source: Indicators of Regulatory Policy and Governance Survey 2017 http://oe.cd/ireg.

Note by Turkey:
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. Turkey recognises the Turkish Republic of Northern Cyprus (TRNC). Until a lasting and equitable solution is found within the context of the United Nations, Turkey shall preserve its position concerning the "Cyprus issue".

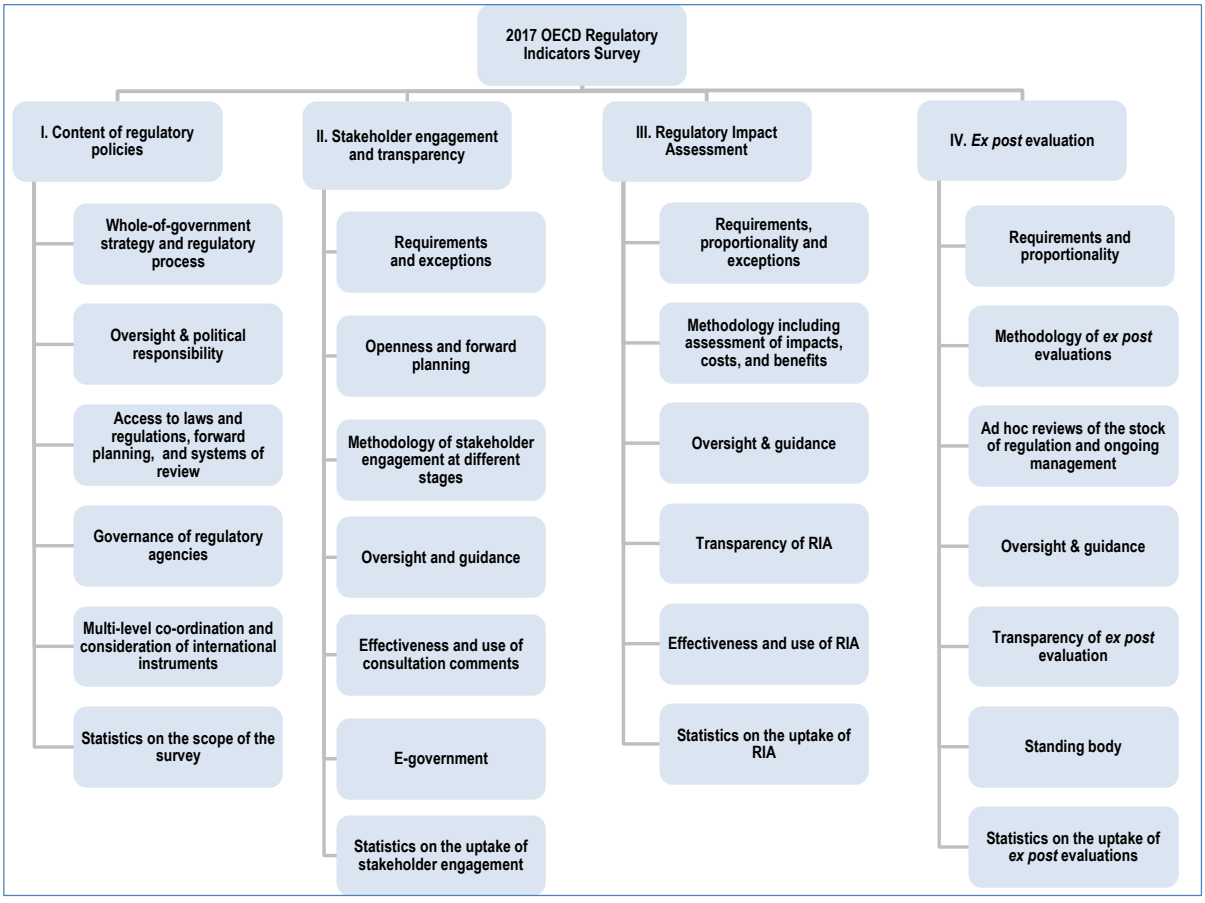
Note by all the European Union Member States of the OECD and the European Union:
The Republic of Cyprus is recognised by all members of the United Nations with the exception of Turkey. The information in this document relates to the area under the effective control of the Government of the Republic of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

Annex B. The 2017 OECD Regulatory Indicators Survey and the composite indicators

The 2017 Regulatory Indicators Survey

The 2017 Regulatory Indicators Survey is structured around the areas of good practices described in the 2012 Recommendation (OECD, 2012). It supported the collection of data on the content of regulatory policies, as well as on the requirements and practices of countries in the areas of: stakeholder engagement, regulatory impact assessment and *ex post* evaluation (see details of the survey structure in Figure A B.1).

Figure A B.1. Structure of the 2017 OECD Regulatory Indicators Survey



This is the second edition of the Regulatory Indicators survey, following a first edition in 2014. The Regulatory Indicators Surveys 2014 and 2017 follow up on previous Regulatory Management Surveys carried out in 1998, 2005, and 2008/09. Compared to the Regulatory Management Surveys, the Regulatory Indicators Survey puts a stronger focus on evidence and examples to support country responses, as well as on insights into how different countries approach similar regulatory policy requirements. They are based on an ambitious and forward-looking regulatory policy agenda and designed to track progress in regulatory policy over time. The surveys capture progress in countries that already have advanced regulatory practices, while recognising the efforts of countries that are just starting to develop their regulatory policy. In addition to collecting information on formal requirements, they gather evidence on the implementation of these formal requirements and the uptake of regulatory management practices. The surveys mostly focus on the processes of developing regulations that are carried out by the executive branch of the national government.

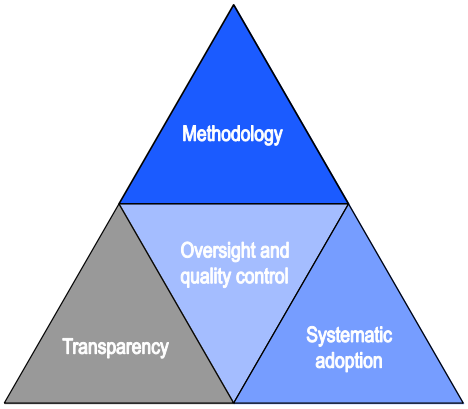
The information collected through the 2017 Regulatory Indicators survey is valid as of 31 December 2017. It is envisaged that the survey be updated every three years. Additional questions may be added in the future to expand the scope of the survey. Information from the 2017 survey is analysed against time-series data from the 2014 survey.

The composite indicators

Three composite indicators were developed based on information collected through the survey: one for RIA, one for stakeholder engagement and one for *ex post* evaluation. Each composite indicator is composed of four equally weighted categories (Figure A B.2):

- Systematic adoption which records formal requirements and how often these requirements are conducted in practice;
- Methodology which gathers information on the methods used in each area, e.g. the type of impacts assessed or how frequently different forms of consultation are used;
- Oversight and quality control records the role of oversight bodies and publically available evaluations; and
- Transparency which records information from the questions that relate to the principles of open government e.g. whether government decisions are made publically available.

Figure A B.2. Structure of composite indicators



Each category is composed of several equally weighted sub-categories built around specific questions in the 2017 OECD Regulatory Indicators Survey. The separate sub-categories are listed in Table A B.1.

Table A B.1. Overview of categories and sub-categories of composite indicators

	Stakeholder engagement	Regulatory impact assessment	*Ex post* analysis
Methodology	• Consultation open to the general public: during early stages of developing regulations • Consultation open to the general public: during later stages of developing regulations • Guidance • Methods of stakeholder engagement adopted in early stages of developing regulations • Methods of stakeholder engagement adopted in later-stages of developing regulations • Minimum periods • Use of interactive websites[1]	• Assessment of budget and public sector impacts • Assessment of competition impacts • Assessment of other economic impacts • Assessment of other impacts • Assessment of environmental impacts • Assessment of social impacts • Assessment of distributional effects • Assessment of wider cost (e.g. macroeconomic costs) • Benefits identified for specific groups • Consideration of issues of compliance and enforcement • Costs identified for specific groups • Guidance • Identify and assess regulatory options • Requirement to identify benefits • Requirement to identify costs • Requirement to identify process of assessing progress in achieving regulation's goals • Requirement to qualitatively assess benefits • Requirement to quantify benefits • Requirement to quantify costs • Risk assessment • Types of costs quantified	• Assessment of costs and benefits • Assessment of achievement of goals • Assessment of impacts • Assessment of consistency with other regulations • Established methodologies and guidance
Systematic adoption	• Formal requirements • Stakeholder engagement conducted in practice in early stages of developing regulations • Stakeholder engagement conducted in practice in later stages of developing regulations	• Formal requirements • RIA conducted in practice • Proportionality	• Use of mechanisms for review including ad hoc reviews • Formal requirements • *Ex post* evaluations conducted in practice • In-depth reviews • Presence of standing body • Proportionality
Oversight and Quality Control	• Oversight and quality control function • Publically available evaluation of stakeholder engagement	• Oversight • Publically available evaluation of RIA • Quality control	• Oversight and quality control function • Publically available evaluation of *ex post* analysis

	Stakeholder engagement	Regulatory impact assessment	*Ex post* analysis
Transparency	• Transparency of process • Consultations are made open to general public • Consideration and response to stakeholder comments • Availability of information	• Responsibility and transparency • Transparency of Process	• Ongoing stakeholder engagement • Stakeholder engagement • Transparency of process

1. Following advice from the OECD Steering Group on Measuring Regulatory Performance, the sub-categories "Use of interactive websites during early stages of developing regulations" and "Use of interactive websites during later stages of developing regulations" used in 2014 were merged for the 2018 edition of the composite indicators. Scores for the 2014 composite indicators were adjusted accordingly to ensure over-time comparability.

To ensure full transparency, the methodology for constructing the composite indicators and underlying data as well as the results of the sensitivity analysis to different methodological choices, including the weighting system, has been made available publicly on the OECD website (http://oe.cd/ireg).

Glossary

Administration and enforcement costs: Costs incurred by government in administering and enforcing the regulatory requirements. These costs include the costs of publicising the existence of the new regulations, developing and implementing new licensing or registration systems, assessing and approving applications and processing renewals. They will also include devising and implementing inspection and/or auditing systems and developing and implementing systems of regulatory sanctions to respond to non-compliance.

Administrative burdens: The costs involved in obtaining, reading and understanding regulations, developing compliance strategies and meeting mandated reporting requirements, including data collection, processing, reporting and storage, but NOT including the capital costs of measures taken to comply with the regulations, nor the costs to the public sector of administering the regulations.

Administrative simplification: Administrative simplification is a tool used to review and simplify the stock of administrative regulations. The main goal of activities focusing on administrative simplification is to remove unnecessary costs imposed on regulated subjects by government regulations that can hamper the economic competition and innovation.

Advisory groups: Selected experts and/or interested parties (e.g. social partners, environmental groups) are brought together to form a consultative body, either on an ad hoc or a standing basis. This is a formalised group, i.e. there is a formal written statute, or members are appointed through a formal method.

Arm's length body: Arm's length is taken to mean the body is not subject to the direction on individual decisions by executive government, but could be supported by officials who are located within a ministry or have its own staff. They are defined by exception, excluding all traditional, vertically integrated ministries.

Broad circulation for comment: Consultation materials, and request for comments, are sent to a selected group of stakeholders, rather than being openly advertised to the general public.

Centre of government: Centre of government refers to the administrative structure that serves the executive (President or Prime minister, and the Cabinet collectively). The centre of government has a great variety of names across countries, such as General Secretariat, Cabinet Office, Chancellery, Office/Ministry of the Presidency, Council of Ministers Office, etc.

Compliance costs: Costs that are incurred by businesses or other parties at whom regulation may be targeted in undertaking actions necessary to comply with the regulatory requirements, as well as the costs to government of regulatory administration and enforcement. This includes *substantive compliance costs*, *administrative burdens* and *Government administration and enforcement costs*.

Ex post *evaluation:* *Ex post* evaluation refers to the process of assessing the effectiveness of policies and regulations once they are in force. It can be the final stage when new policies or regulations have been introduced and it is intended to know the extent of which they met the goals they served for. It can also be the initial point to understand a particular situation as a result of a policy or regulation in place, providing elements to discuss the shortcomings and advantages of its existence. *Ex post* evaluation should not be confused with monitoring, which refers to the continuous assessment of implementation in relation to an agreed schedule.

Financial costs: The financial cost of regulations is the cost of capital deployed in meeting regulatory compliance obligations. That is, where investments must be undertaken (i.e. equipment purchased, etc.) in order to comply with regulations, the cost to the firm includes both the purchase price of these items and the cost of financing the purchase – whether from debt or equity.

Formal consultation with selected groups: Exchanges with selected interested parties where the proceedings are formally recorded.

Government administration and enforcement costs: Costs incurred by government in administering and enforcing the regulatory requirements.

Green paper: A consultation document designed to stimulate discussion on a particular topic. Green papers invite interested parties (bodies or individuals) to participate in a consultation process and debate a subject and provide feedback on possible solutions. Green papers are intended to provide information for discussion and do not imply any commitment to any specific action.

Indirect costs: Indirect costs are incidental to the main purpose of the regulations and often affect third parties. They are likely to arise as a result of behavioural changes prompted by the first round impacts of the regulations. Dynamic costs – i.e. costs caused by negative changes in market conditions over time – may be included in this category. Indirect costs are also called "second round" costs.

Informal consultation with selected groups: *Ad hoc* meetings with selected interested parties, held at the discretion of regulators.

International Instruments: For the purpose of this survey, international instruments cover legally binding requirements that are meant to be directly binding on member states and non-legally binding instruments (including technical standards) that may be given binding value through transposition in domestic legislation or recognition in international legal instruments. This broad notion therefore covers e.g. treaties, legally binding decisions, non-legally binding recommendations, model treaties or laws, declarations and voluntary international standards.

International Regulatory Co-operation (IRC): Based on OECD (2013), *International regulatory Co-operation: Addressing Global Challenges*, IRC is defined as any agreement, formal or informal, between countries to promote some form of cooperation in the design, monitoring, enforcement, or ex-post management of regulation.

Legal quality: For the purpose of the 2017 Indicators of Regulatory Policy and Governance survey, the legal quality of a regulation is determined by its constitutionality, the coherence with the existing body of law and international obligations and the use of plain language drafting. Legal quality is a key element of regulatory quality more broadly, as it provides business and citizens with certainty and clarity as to the rules they have to abide by.

Macroeconomic costs: Cost impacts on key macroeconomic variables such as GDP and employment caused by regulatory requirements. Few specific regulatory measures will have discernible macroeconomic costs. However, they may constitute a highly significant cost item in some cases.

Minister: The most senior political role within a portfolio. In Westminster system governments, these are typically styled "ministers", but the title varies.

National government: The national, central, or federal government that exercises authority over the entire economic territory of a country, as opposed to local and regional governments.

Performance-based regulation: Regulations that impose obligations stated in terms of outcomes to be achieved or avoided, giving regulated entities flexibility to determine the means to achieve the mandated or prohibited outcomes. Also referred to as outcome-based regulation.

Post-implementation review: A review of a rule or regulation after it has come into being.

Primary legislation: Regulations which must be approved by the parliament or congress. Also referred to as "principal legislation" or "primary law". This category further distinguishes between primary laws initiated by parliament and those initiated by the executive.

Preparatory committee: A committee of interested parties/experts who are formally responsible for helping find solutions to the problem and draft the regulations. Also referred to as "preparatory commission".

Public consultation over the internet: Consultation open to any member of the public, inviting them to comment with a clear indication how comments can be provided. The public should be able to either submit comments on-line and/or send them to an e-mail address that is clearly indicated on the website. This excludes simply posting regulatory proposals on the internet without provision for comment.

Public meeting: A meeting where members of the general public are invited to attend and to provide comments. A physical public meeting is a public meeting where members of the public must attend in person. Please note that for the purposes of this questionnaire parliamentary debates should not be considered as public meetings even when members of the public are allowed to witness them.

Regulation: The diverse set of instruments by which governments set requirements on enterprises and citizens. Regulation include all laws, formal and informal orders, subordinate rules, administrative formalities and rules issued by non-governmental or self-regulatory bodies to whom governments have delegated regulatory powers.

Regulators: Administrators in government departments and other agencies responsible for making and enforcing regulation.

Regulatory agency: A regulatory agency is an institution or body that is authorised by law to exercise regulatory powers over a sector/policy area or market.

Regulatory impact assessment (RIA): Systematic process of identification and quantification of benefits and costs likely to flow from regulatory or non-regulatory options for a policy under consideration. A RIA may be based on benefit-cost analysis, cost-effectiveness analysis, business impact analysis etc. Regulatory impact assessment is also routinely referred to as regulatory impact analysis, sometimes interchangeably (OECD, 2012, p. 25).

Regulatory management tools: The term "regulatory management tools" comprises different tools available to implement regulatory policy and foster regulatory quality. In particular, the 2017 Indicators of Regulatory Policy and Governance survey focuses on quality control of three regulatory management tools in particular: Regulatory Impact Assessment (RIA), stakeholder engagement, and *ex post* evaluation.

Regulatory policy: The set of rules, procedures and institutions introduced by government for the express purpose of developing, administering and reviewing regulation.

Regulatory quality: Regulatory quality is about enhancing the performance, cost-effectiveness, and legal quality of regulation and administrative formalities. The notion of regulatory quality covers process, i.e. the way regulations are developed and enforced, which should follow the key principles of consultation, transparency, accountability and evidence-base. The notion of regulatory quality also covers outcomes, i.e. regulations that are effective at achieving their objectives, efficient, coherent and simple.

Regulatory reform: Changes that improve regulatory quality, that is, enhance the performance, cost-effectiveness, or legal quality of regulation and formalities. "Deregulation" is a subset of regulatory reform.

Sanctioning function: Sanctioning function refers to the oversight body's authority to prevent a regulation from proceeding to the next stage/an *ex post* evaluation from being finalised if quality standards have not been met. Sanctioning function is also referred to as gatekeeper function.

Stakeholder engagement: Stakeholder engagement refers to the process by which the government informs all interested parties of proposed changes in regulation and receives feedback.

Subordinate regulation: Regulations that can be approved by the head of government, by an individual minister or by the cabinet – that is, by an authority other than the parliament/congress. Examples include regulations, rules, orders, decrees, etc. Please note that many subordinate regulations are subject to disallowance by the parliament/congress. Subordinate regulations are also referred to as "secondary legislation" or "subordinate legislation" or "delegated legislation".

Substantive compliance costs: The incremental costs to the target group of complying with a regulation, other than administrative costs. They include only the direct costs borne by those for whom the regulation imposes compliance obligations. Substantive compliance costs include the following broad categories: implementation costs, direct labour costs, overheads, equipment costs, materials costs and the costs of external services.

Sunsetting: The automatic repeal of regulations a certain number of years after they have come into force.

Virtual public meeting: A meeting where members of the general public can attend and make comments via internet or phone.

White paper: A government report which sets out a detailed policy or regulatory proposal. A white paper allows for the opportunity to gather feedback before the policy/regulation is formally presented.

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