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Defining and Contextualising Regulatory Oversight and Co-ordination



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Defining and Contextualising Regulatory Oversight and Co-ordination

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ABSTRACT

This paper aims to support better-targeted and more homogeneous data collection and comparative analysis of regulatory oversight bodies (ROBs). To do so, it builds on relevant academic literature and available data to sharpen the definition of ROB used in OECD analytical work and policy discussions. It also discusses ROBs' role within the regulatory governance cycle as well as various aspects related to regulatory oversight and co-ordination, with special attention to the overall institutional setting (including the relationships between various ROBs), context and objectives of regulatory reform, tasks and responsibilities, and associated accountability arrangements.

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Key words: Regulatory policy, regulatory governance, regulatory oversight

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Acronyms and abbreviations

ATR	Advisory Board on Regulatory Burdens (formerly ACTAL, The Netherlands)
BRE	Better Regulation Executive (UK)
CETA	EU-Canada Comprehensive Economic and Trade Agreement
CPB	<i>Centraal Planbureau</i> (Bureau for Economic Policy Analysis, NL)
CRS	Congressional Research Service (USA)
DG	Directorate General (EU)
ENA	<i>École Nationale de l'Administration</i> (National School of Administration, FR)
NAO	National Audit Office (UK)
OIRA	Office of Information and Regulatory Affairs (US)
OMB	Office of Management and Budget (US)
ROB	Regulatory Oversight Body
RPC	Regulatory Policy Committee (UK)
RIA	Regulatory impact assessment
RSB	Regulatory Scrutiny Board (EU)
SCM	Standard Cost Model
SNA	<i>Scuola Nazionale dell'Amministrazione</i> (National School of Administration, IT)

Introduction

Over the past two decades, many countries have emphasised the importance of regulatory policy and governance as means to achieve high-quality regulation, and better outcomes in terms of economic growth and well-being. The OECD has been among the first to recognise the importance of the so-called “regulatory governance cycle”, whereby governments exercise control over the design, implementation, delivery and evaluation of regulations over time, managing at once the flow and the stock of regulation to the benefit of society as a whole. Within the regulatory governance cycle, one of the key functions is regulatory oversight and co-ordination, which is given prominence in the 2012 Recommendation on Regulatory Policy and Governance (OECD, 2012^[1]). Although regulatory oversight has been historically performed across jurisdictions by various institutions (including those pertaining to the executive, legislative and judicial branches, or by the Council of State, e.g. in France), this function has recently been defined in the narrower sense of supervision by the executive branch (Wiener, 2013^[2]).

Stronger demand for regulatory oversight has arisen during the last decades in the context of ensuring a whole-of-government approach to regulatory policy and the growing use of economic analysis and methodologies such as Regulatory Impact Analysis (RIA) and *ex post* evaluation of regulation. As argued by Wiener, the general objective of regulatory oversight should be seen as aligned with the general objectives of legislative and regulatory reform, i.e. improving regulatory quality: “wherever states deploy regulation, demand arises for oversight of the regulatory system to reduce the costs and side effects of regulation, increase the benefits of regulation, and promote transparency and accountability”.

Within this definition of regulatory oversight, several countries have set up one or more regulatory oversight bodies (ROBs), endowed with the responsibility to “oversee regulatory quality” (Cordova-Novion, C. and Jacobzone, S., 2011^[3]) (OECD, 2015^[4]) (OECD, 2018^[5]) (OECD, 2021^[6]). The role played by these bodies is increasingly seen as essential for the proper functioning of the regulatory governance cycle: the effective presence of ROBs is recognised as a key prerequisite for achieving high-quality regulation, and features prominently in the 2012 OECD Recommendation of the Council on Regulatory Policy and Governance (Box 1). Since then, the OECD keeps track of the evolution of ROBs in member countries every three years in the context of its *Regulatory Policy Outlook* series.

Box 1. Regulatory oversight within the OECD 2012 Recommendation of the Council on Regulatory Policy and Governance

The OECD Recommendation of the Council on Regulatory Policy and Governance recommends that countries “establish mechanisms and institutions to actively provide oversight of regulatory policy procedures and goals, support and implement regulatory policy, and thereby foster regulatory quality” (Principle 3).

The Recommendation further elaborates on some of the most important features that governments should take into account when creating an oversight mechanisms and institutions. Principle 3.1 states that a standing body responsible for regulatory oversight should “be established close to the centre of

government, to ensure that regulation serves whole-of-government policy” – while noting that “the specific institutional solution must be adapted to each system of governance.”

Principle 3.2 states that governments should establish the authority of oversight in the body’s mandate, such as statute or executive order, and make it independent from political influence when exercising its mandate. Principle 3.3 lists the functions to be performed by the regulatory oversight body, including:

- “[Providing] quality control through the review of the quality of impact assessments and returning proposed rules for which impact assessments are inadequate;
- Examining the potential for regulation to be more effective including promoting the consideration of regulatory measures in areas of policy where regulation is likely to be necessary;
- Contributing to the systematic improvement of the application of regulatory policy;
- Co-ordinating *ex post* evaluation for policy revision and for refinement of *ex ante* methods; and
- Providing training and guidance on impact assessment and strategies for improving regulatory performance.”

Principle 3.4 states that the oversight body’s performance, including its review of impact assessments, should be periodically evaluated.

Also important for the purposes of setting up regulatory oversight and co-ordination mechanisms, Principle 1.6 puts emphasis on a clear identification of the role that each minister shall have in putting regulatory policy into effect and recommends that governments “consider assigning a specific Minister with political responsibility for maintaining and improving the operation of the whole-of-government policy on regulatory quality and to provide leadership and oversight of the regulatory governance process”, in particular by:

- “Monitoring and reporting on the co-ordination of regulatory reform activities across portfolios;
- Reporting on the performance of the regulatory management system against the intended outcomes; and
- Identifying opportunities for system-wide improvements to regulatory policy settings and regulatory management practices.”

Source: (OECD, 2012^[11]), “Recommendation of the Council on Regulatory Policy and Governance”, www.oecd.org/gov/regulatory-policy/49990817.pdf.

While many OECD Member countries have developed a system of regulatory oversight and co-ordination in the past two decades, the way in which their ROBs are organised and the powers and functions attributed to these bodies vary significantly across countries (OECD, 2018^[5]). Although existing differences can be probably traced back to the diversity in the implementation of regulatory policy and better regulation strategies (OECD, 2015^[7]), it is important to understand where the differences lie, and shed light on potential good practices from which other countries (both within and outside the OECD) could learn. The result from the 2018 *Regulatory Policy Outlook* flagging the multiplicity of ROBs in OECD jurisdictions also begs the question of how to define ROBs and their core attributes.

In this context, this paper builds on the academic literature and extensive data collection carried out by the OECD to sharpen the definition of ROBs used in OECD analytical work and policy discussions and beyond. It aims to support a more homogeneous data collection and comparative analysis of ROBs operating in various countries. Accordingly, the paper focuses on: 1) a discussion of the definition of regulatory oversight, and the role of ROBs within the regulatory governance cycle, and 2) a discussion of the variety of aspects related to regulatory oversight and co-ordination, from the overall institutional setting and context of regulatory reform to the specific objectives, location within the administration, internal organisation, roles, tasks, responsibilities and accountability arrangements attached to regulatory oversight bodies, as well as the co-existence of various ROBs and their relationships.

1 Sharpening the definition of regulatory oversight

This section is meant to help the reader understand the place of regulatory oversight within the context of regulatory policy and the role of ROBs within the regulatory governance cycle. It explains where the idea of a stronger regulatory oversight has originated in most countries, driven by multiple challenges for implementing regulatory policy and how the broad objectives of regulatory reform also relate to the mechanisms and institutions (including ROBs) needed to achieve such objectives. It then discusses the need for a narrower definition of regulatory oversight and proposes a resulting typology of oversight bodies.

The emerging need for regulatory oversight and co-ordination

Over the past three decades, many OECD countries have undergone waves of thorough regulatory reform. While the 1990s predominantly saw a tendency towards the adoption of forms of *ex ante* policy appraisal such as regulatory impact analysis (RIA) along with structural reforms aimed at liberalising markets and improving the business environment, the past 20 years have been characterised by a growing attention towards adopting a whole-of-government approach to regulatory quality. This follows all phases of the life of a regulation to ensure quality and consistency throughout the whole regulatory governance cycle including *ex ante* impact analysis, monitoring and *ex post* evaluation, all fed by regular stakeholder engagement (Box 1.1).

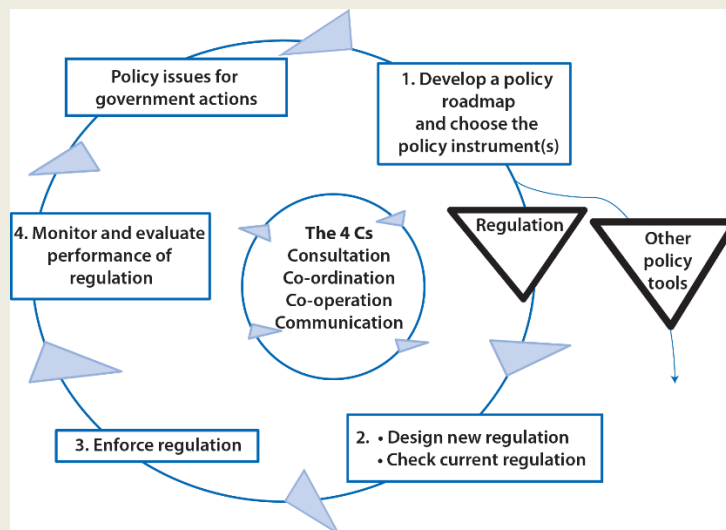
Evidence-based policy making is chiefly based on the assumption that administrations can use analytical tools and structured decision-making processes to improve regulatory quality, and that they will use such tools consistently and in different phases of the life of a legal rule. This is indeed a collective effort that requires sustained commitment at the centre of government, support from external stakeholders and an adequate set of incentives for civil servants to deliver on the use of better regulation tools.

Such increasing demand for the use of evidence-based, comprehensive approaches to policy making suggests a strong motivation for institutionalising oversight and co-ordination functions typical of ROBs. In particular, the adoption of more sophisticated and ambitious approaches for regulatory policy and regulatory reform raises multiple challenges, which have been pointed out, *inter alia* by Lodge (OECD, 2015^[8]). At a general level, regulatory policy faces the problem that different goals may be advocated at the same time; and while it is usually easier to agree on the means rather than on the ends, means are inevitably linked to ends in this area. Adding to the complexity of coupling means (tools) and ends (goals), the political economy of regulation suggests that institutions are broadly affected by: i) the difficulty of establishing a credible commitment; ii) the possibility of being captured; and iii) the need to align the incentives of different actors with public regulatory and public policy goals. More generally, institutions are faced with the challenge of producing the optimal level of regulation, hence avoiding both over and under regulation.

Box 1.1. The regulatory governance cycle

The so-called “regulatory governance cycle” or “policy cycle” includes tools for both the *ex ante* analysis and for the *ex post* evaluation of public policy. They apply to the analysis of the flow of individual policy measures as well as to the stock of the existing corpus of legislation in given sectors. Against this background, a responsive administration performs an *ex ante* RIA of preliminary phases, but also provides for monitoring and evaluation indicators and an *ex post* evaluation, which itself leads to the identification of the need for further action and a new *ex ante* assessment phase.

Figure 1.1. The regulatory governance cycle



Source: (OECD, 2011^[9]).

Lodge argues that the use of regulation is generally constrained by four deficits: i) lack of oversight; ii) lack of participation; iii) lack of attention to incentives; iv) lack of adaptability.¹ The lack of oversight also leads to a deficit in the consistency and predictability of regulation and can be aggravated by the presence of multiple regulators and the fragmentation of tasks, leading to incoherent and incomplete responses. A participation deficit imposes challenges in engaging stakeholders in the regulatory process and the risk of capture and lack of representativeness of the engagement process that questions the legitimacy of regulation. The lack of attention to individual incentives relates to the prescriptive nature of regulation that may fail to obtain the expected responsiveness in the regulated and the public at large. Finally, a deficit of adaptability can lead to a lack of flexibility and diversity of regulatory instruments. It ultimately calls into question the overall efficiency of regulation. Each of these deficits may call for a different response and even lead to contradictory results and may in turn call for more oversight in regulatory policy, although increasing oversight is at the same time constrained by limited and scarce resources as well as by political considerations (OECD, 2015^[8]).

Against this general background, a number of institutional and organisational safeguards have been identified, which can help to overcome some of these problems through an increasing emphasis on central oversight and co-ordination. This is supported by theory as illustrated in Box 1.2.

Box 1.2. Theoretical perspectives on regulatory oversight

The role of oversight bodies has been analysed from different theoretical perspectives, including the principal-agent theory, which studies the interaction and tensions between the incentives of the principal and the agent to whom the former delegates some powers, suggesting insights as to how to make agent's actions responsive to the goals of the principal.

Applied to the context of regulatory reform, the principal-agent theory can be referred to two actors called Central Government (CG) and delegated agency (DA), which are self-motivated and may have goals that differ from that of achieving efficient outcomes. Absent any other form of control, CG may find it useful to mandate RIA or other form of impact assessment, as a backing of rules proposed by DA for several reasons. First, since it is CG's prerogative to sanction DA for insufficient or flawed impact analysis, CG may decide to support also badly justified rules that converge with its own agenda. In any event, if the analysis will be recognised as flawed in the future, responsibility will fall on DA rather than on CG, since the former was the more specialised agency in charge of producing economic analysis.

The principal-agent setting, in which a ROB is representing the interest of the principal (CG), has been extensively studied in the academic literature with reference to the US model of delegation and oversight (Gailmard, 2012^[10]). The imperfections that characterise this principal-agent interaction are such that, in many countries, the need for additional oversight – whether “implicit” through stakeholder consultation or “explicit”, e.g. by audit institutions or congressional offices – has been perceived, leading to a multiplicity of ROBs to be simultaneously at play. This might even lead to a situation of multiple principals, in which – depending on the co-ordination mechanisms between principals – agent's incentives might be either powerfully steered towards regulatory quality and consistency, or brought into a general state of confusion due to inconsistency between the expectations of different principals.

Quality control places incentives on civil servants to better and more consistently use instruments such as RIA, consultation and ex post evaluation. Simply mandating that administrations follow a due process and produce high quality documents is not enough to ensure that this will happen in practice. The existence of strong oversight can thus create more incentives for administrations to deliver on the proposed regulatory reforms. Such oversight can be performed by the centre of government itself, but also by independent bodies, by parliaments, or even by external stakeholders through extensive transparency and consultation requirements.

Strong oversight from within government helps governments align their incentives with the administration. Through enhanced regulatory control, governments can secure that administrations will use better regulation instruments in support of the long-term policy goals that the government has announced. This has proven to be a decisive factor in the choice to locate oversight within the executive rather than outside. This motivation for strengthening regulatory oversight is also likely to become more prominent over time as the “policy coherence” motivation for regulatory reform seems the most recurrent one (OECD, 2015^[7]). For example, governments that have set economic, social and environmental targets have to rely on administrations for the adoption of the regulatory actions that will contribute to the achievement of such targets. At the same time, they will need to oversee their ministers to ensure that they actually work in the same direction as the centre of government.

A central regulatory oversight and co-ordination function helps governments manage the stock and the flow of regulation. While ministries, departments or agencies work on their specific policy portfolios, only the centre of government can develop a whole-of-government approach to regulation and even attempt (as was done e.g. in the United States since the 1990s) to collect data and produce estimates of the whole stock of costs and benefits generated by regulation over time. This is even more true if governments decide to launch comprehensive reviews of the stock of legislation (for example, a

measurement of administrative burdens) or to analyse the cumulative and interactive impacts of legal rules, originated by different ministries.¹

Regulatory policy and governance require a set of activities, many of which are best performed at the central level. These are not strictly speaking control or scrutiny activities, but belong more generally to the area of co-ordination activities. They include *i.a.* the organisation and delivery of training to civil servants; the drafting of guidelines on how to perform regulatory impact analysis, *ex post* evaluation, risk analysis or any other specific analysis of the impacts of legislation; the establishment of minimum standards for consultation of stakeholders; the overall regulatory planning to be carried out for the whole administration. As easily seen, some of these activities have to be performed centrally, whereas others could also be delegated to individual ministries but are often centralised for efficiency and consistency reasons (e.g. training, guidelines). All these reasons have played a role in the decision to focus on regulatory oversight and co-ordination. The need to carry out so many centralised functions (and others that cannot be qualified per se as co-ordination and oversight) has, in many countries, also led to the belief that at least one dedicated body would be needed. Since the late 1990s, the OECD has also repeatedly stated the importance of linking impact assessment to an oversight body as a key enabler of the success of RIA models and of regulatory reform more generally – this led to the insertion of a full principle on regulatory oversight in the *2012 Recommendation on Regulatory Policy and Governance* (the 2012 Recommendation), the culmination of OECD understanding of good regulatory practices.

Results from the 2018 and 2021 editions of the *OECD Regulatory Policy Outlook* confirm that countries are investing in regulatory oversight in line with the 2012 Recommendation. All OECD members continue to have at least one ROB in charge of promoting regulatory policy and monitoring regulatory reform and regulatory quality, highlighting the crucial importance of dedicated mechanisms and institutions to ensure decision making is systematically grounded on the best available evidence. In addition, a number of OECD members have continued to strengthen and institutionalise their existing oversight mechanisms. Since the beginning of 2018, five ROBs have had their mandate renewed and seven of them have become permanent. In addition, a number of them have assumed new responsibilities, which may be a sign of governments' willingness to embed these ROBs further in the wider regulatory policy environment.

A sharper definition of regulatory oversight

The 2012 Recommendation combined a functional and an institutional approach to the definition of regulatory oversight, and refrained from identifying a core list of oversight functions, which would then be ascribed to ROBs. Various OECD works, including the conclusions of the 2016 OECD conference on "Realising Impact",² showed that ROBs can play a crucial role in supporting political decision-making:

- They act as champions of evidence based and transparent rulemaking throughout the whole policy cycle.
- They are key facilitators for aligning and co-ordinating governments' use of regulatory policy tools across the administration.
- They promote greater responsiveness and effectiveness of regulation by encouraging governments to make use of the results of regulatory policy tools.
- They are instrumental in promoting cultural change in public administrations.

The 2018 OECD Regulatory Policy Outlook defined "regulatory oversight" along the broad lines of the 2012 Recommendation as the variety of functions and tasks carried out by bodies/entities in the executive or at arm's length from the government in order to promote high-quality, evidence-based regulatory decision making. These functions were categorised in five areas, which can be addressed by a single institution/body or by several of them (Table 1.1).

Table 1.1. Regulatory oversight functions stemming from OECD 2012 Recommendation

Areas of responsibility	Functions	Location
Consultation/stakeholder engagement	Quality control	Within government
Legal quality	<ul style="list-style-type: none"> • Scrutinise evaluations 	<ul style="list-style-type: none"> • Centre of government (e.g. PM's office, cabinet office)
Administrative simplification	<ul style="list-style-type: none"> • Challenge unsatisfactory tools or processes 	<ul style="list-style-type: none"> • Ministry of Finance / Ministry of Economy / Treasury
RIA	<ul style="list-style-type: none"> • Review legal quality 	<ul style="list-style-type: none"> • Ministry of Justice
Ex post evaluation	Identifying areas of policy where regulation can be made more effective	<ul style="list-style-type: none"> • Other ministries
Other (e.g. de-regulation agenda or e-government)	<ul style="list-style-type: none"> • Gather opinions from stakeholders on areas in which regulatory costs are excessive and submit them to individual departments/ministries. • Reviews of existing regulation • Analysis on the stock and/or flow of regulation. • Advocate for particular areas of reform 	External to government
	Systematic improvement of regulatory policy	<ul style="list-style-type: none"> • Independent bodies • Parliament • Advisory group • Office of Attorney General
	<ul style="list-style-type: none"> • Institutional relations e.g. co-operation with international fora • 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 of regulatory tools	
	<ul style="list-style-type: none"> • Encourage the smooth adoption of the different aspects of regulatory policy at every stage of the policy cycle. 	
	Guidance and training	
	<ul style="list-style-type: none"> • Issue guidelines • Provide assistance and advice to regulators for performing assessments 	

Source: (OECD, 2015^[4]).

However, to avoid conflating under the same umbrella definition too many institutions dealing with aspects that may be collateral but not essential to the function of regulatory oversight, there is a need to narrow down the definition of oversight. One way to do it is to clearly separate the core functions of regulatory oversight and the non-core functions. *We define as “core” those functions that are essential to the achievement of the mission of overseeing the substantive quality and evidence-based nature of the regulatory governance cycle, or parts thereof.* To the contrary, *we define as “non-core” those functions that are ancillary to oversight and may also be performed by entities or institutions that do not oversee the substantive quality and evidence-based nature of the regulatory governance cycle.*

Another way of looking at the proposed distinction is to consider the core functions as necessary and sufficient to ensure the performance of the oversight function: the fact that an institution carries out at least one of these functions is therefore sufficient to qualify it as an oversight body. On the contrary, an institution that only performs one or more non-core functions will not be considered as being in charge of regulatory oversight. This does not prejudice the importance of these corollary functions more generally. For example the function of legal scrutiny is essential to the functioning of the law-making process; it is however not a core function of regulatory oversight as delineated below.

Table 1.2 maps the “core” and “non-core” functions of regulatory oversight in the five areas of regulatory oversight identified in Table 1.1.

Table 1.2. Areas and functions of regulatory oversight

Areas of regulatory oversight	Key functions (core v. non-core)
Quality control (<i>scrutiny of the flow of new regulations</i>)	<p><i>Core functions:</i></p> <ul style="list-style-type: none"> • Scrutinise <i>ex ante</i> impact assessments and/or <i>ex post</i> evaluations of legislation • Scrutinise the use of regulatory management tools (including stakeholder consultation) and challenge if deemed unsatisfactory • Monitor compliance with better regulation guidelines <p><i>Non-core functions</i></p> <ul style="list-style-type: none"> • Carry out <i>ex ante</i> impact assessments and/or <i>ex post</i> evaluations • Advise on specific tests (e.g. competition test, SME test) • Scrutinise the quality of the legal drafting • Advocate the adoption of specific new regulatory interventions (e.g. prompt letters)
Identifying areas of policy where regulation can be made more effective (<i>scrutiny of the stock of existing regulations</i>)	<p><i>Core functions</i></p> <ul style="list-style-type: none"> • Co-ordinate the programming and execution of reviews of entire policy areas across government • Oversee the introduction and application of review and sunset clauses • Co-ordinate baseline measurements of administrative burdens • Co-ordinate and evaluate the application of stock-flow linkage rules • Monitor and enforce cost reduction targets (regulatory budgeting) <p><i>Non-core functions</i></p> <ul style="list-style-type: none"> • Gather opinions from stakeholders on areas in which regulatory costs are excessive and/or regulations fail to achieve its objectives • Carry out reviews of regulations and regulatory stock • Advocate for particular areas of reform
Systematic improvement of regulatory policy (<i>scrutiny of the system</i>)	<p><i>Core functions</i></p> <ul style="list-style-type: none"> • Monitoring and reporting, including reporting progress to parliament / government to help track success of implementation of regulatory policy/governance • Co-ordinate with other oversight bodies (if any) <p><i>Non-core functions</i></p> <ul style="list-style-type: none"> • Evaluate the regulatory governance framework and propose changes • Institutional relations e.g. co-operation with international fora
Co-ordination (<i>coherence of the approach in the administration</i>)	<p><i>Core functions</i></p> <ul style="list-style-type: none"> • Promote a whole-of-government, co-ordinated approach to regulatory quality • Co-ordinate specific aspects of the regulatory governance cycle (e.g. “delivery”, implementation/enforcement). • 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 <p><i>Non-core functions</i></p> <ul style="list-style-type: none"> • Engage in regulatory planning • Co-ordinate the work of institutions in charge of providing advice or otherwise intervene in the policy cycle • Co-ordinate formal regulatory co-operation agreements and arrangements
Guidance, advice and support (<i>capacity building in the administration</i>)	<p><i>Core functions</i></p> <ul style="list-style-type: none"> • Issue guidelines and guidance <p><i>Non-core functions</i></p> <ul style="list-style-type: none"> • Provide assistance and training to regulators/administrations for managing regulatory policy tools (i.e. impacts assessments and stakeholder engagement)

Source: Authors' elaboration based on the 2012 Recommendation (OECD, 2012^[11]) and the OECD Regulatory Policy Outlooks: (OECD, 2015^[41]) and (OECD, 2018^[5]).

Concerning quality control related to the flow of regulations, we consider that:

- The substantive scrutiny of RIAs and *ex post* evaluations are core functions, as they relate directly to the oversight of the key regulatory management tools that guarantee the evidence-based nature of regulatory interventions.
- Monitoring compliance with better regulation guidelines and requesting improvements to draft impact assessments are also activities that pertain to the core oversight function.
- The same applies to the oversight of stakeholder consultation, in particular when minimum standards of consultation or related guidelines are available: consultation is an essential input to evidence-based regulation, and its co-ordination and scrutiny relates directly to the oversight function.

Conversely, the scrutiny of the quality of the legal drafting is considered a non-core function, as it does not pertain to the evidence-based nature of regulation, but rather to its formal (legal) quality.³ For further details on the role and definition of legal quality control, see Box 1.3. Similarly, the fact that an institution is in charge of advising the administration on the application of a specific test (e.g. a SME association having a say on the application of the “think small first” test; or a competition authority having the task to assist the administration in the application of the competition test) does not constitute a core function of oversight, but rather a “peripheral” activity. Also the power to advocate new rules, e.g. through prompt letters (as in the case of the Office of Information and Regulatory Affairs, OIRA, in the US) can be considered as a non-core function, since the fact that an institution is tasked with this power does not *per se* make it an oversight body.

When it comes to the scrutiny of the stock of regulation, the following functions are identified as core:

- the planning and co-ordination of regulatory reviews of entire policy areas across the whole government (e.g. fitness checks and REFIT initiatives at the EU level⁴);
- the oversight of the systematic use of review and sunset clauses, which aim at keeping the stock of regulation under control;
- the co-ordination of baseline measurements of administrative burdens, which typically require the attribution of responsibility and competence to various parts of the administration (e.g. departments in charge of business-relevant regulation) and the formulation of reform proposals to achieve burden reduction targets;
- the operation of whole-of-government plans to reduce compliance costs; and
- the co-ordination of the implementation of stock-flow linkage rules such as “one in, x out”, which require the ability and power to co-ordinate the behaviour of the administration (Trnka and Thuerer, 2019^[11]).
- On the other hand, the collection of opinions from stakeholders to identify areas in which regulatory costs are excessive and/or regulations fail to achieve its objectives is an activity that could be carried out by institutions that have no regulatory oversight functions, such as a regulatory agency or a parliamentary assembly. The act of consulting stakeholders, in other words, is not a core attribute of oversight, whereas the scrutiny of how stakeholders are consulted is. Similarly, oversight does not normally require the performance of regulatory reviews but rather the co-ordination and scrutiny of regulatory reviews carried out by the administration.
- Finally, advocacy is also considered as a non-core function. As a matter of fact, this function goes beyond oversight: in many countries, this function is notably performed by pro-productivity institutions such as *ad hoc* task forces, productivity committees, think tanks, etc. (Renda and Dougherty, 2017^[12]). It can also be fulfilled by permanent stakeholder consultation bodies (such as the “Fit for Future” platform in the EU). Considering this activity as a core oversight function would imply that all these bodies are classified as ROB.

Box 1.3 The peculiar role and uncertain definition of legal quality control

A specific role in regulatory oversight and co-ordination is played by legal quality control. In many jurisdictions, this activity is being carried out by Ministries of Justice or cabinet offices, often in a way that is completely isolated from other oversight and co-ordination activities. In most cases, this activity takes the form of technical checks on the terminology used in legal texts, and is aimed at promoting consistency and clarity of the legal expressions used. This is a very basic form of regulatory co-ordination, which exclusively looks at the language used in the text of proposed new legislation. Many jurisdictions that have not introduced better regulation tools such as RIA, or stakeholder consultation do feature at least a basic legal quality check.

However, some jurisdictions go beyond the mere technical analysis of the text. In Canada, the Statutory Instruments Act establishes a process designed to ensure that regulations are made “on a legally secure foundation” (Canadian Government, 2001^[13]). In Australia, the legal quality check follows a specific obligation to make legal rules as simple as possible. Many other jurisdictions include in their legal quality checks also an analysis of the consistency of the text with international legislation and the country’s international obligations (e.g. Estonia).

Against this background, in the scholarly literature and in the international debate on better regulation the quality and simplicity of the legal language used in legislative texts is being given increasing importance (Sunstein, C., 2013^[14]). This also acknowledges that the legal quality and the simplicity of the legal text can have important economic consequences, for example in terms of reduction of administrative burdens, transaction costs, as well as compliance, litigation and enforcement costs. Accordingly, legal quality checks can be considered as an important part of regulatory oversight and co-ordination: however, it will also be important to capture, in future OECD surveys, the extent to which legal quality checks are limited to controls of terminology, or are also expanded to cover the consistency, clarity and simplicity of the legal rules at hand.

Regarding the *activities related to the systematic improvement of the regulatory system*, we consider that:

- Oversight implies, as a core function, the regular reporting on the performance and improvement of the way in which the administration carries out the activities related to the regulatory governance cycle. Institutions in charge of oversight typically possess the granular data needed to effectively report on this issue.
- By contrast, other institutions may carry out the assessment of the overall governance framework, including the performance of the oversight body.

Co-ordination activities lie at the heart of the oversight function.

- Typical “core” functions include the promotion of a whole-of-government, co-ordinated approach to regulatory quality and evidence-based policy making, and the co-ordination of specific aspects of the regulatory governance cycle.
- Likewise, the activities aimed at facilitating and ensuring internal co-ordination across ministries/departments in the application of regulatory management tools are typical of the oversight bodies.
- Oversight activities can also imply regulatory planning, but this activity is often carried out as an input to the policy cycle rather than being internal to it. In this respect, regulatory planning appears as a “non-core” activity, which *per se* does not qualify the administration in charge of it as a ROB.

Finally, oversight bodies are often also in charge of *capacity-building activities*. In this respect:

- The drafting and implementation of guidance and guidelines on how to make use of regulatory management tools is to be considered as a core oversight function, since it is through such activity that the central ROB sets the rules of the game, which will apply throughout the whole oversight of the regulatory governance cycle.
- On the other hand, the training of civil servants and other forms of capacity building in the administration are typically the responsibility of institutions such as the schools of administration (e.g. the ENA in France, the SNA in Italy), which have no regulatory oversight role in their country's Better Regulation system. In many other cases, such activities are indeed outsourced to consultants or academics.

What is (and what is not) a ROB?

Based on our classification of the core and non-core oversight functions, *we define a ROB as an institution that is in charge of at least one core oversight function*. ROBs are almost never alone: not only are they often accompanied by other ROBs in their own legal systems, but a number of other institutions complement their role by performing non-core oversight activities such as the ones illustrated above. Data from the iREG Surveys have highlighted that most jurisdictions feature more than one ROB, and that responsibility for certain oversight functions is frequently split across several bodies.

In addition, surveyed bodies tend to cumulate and combine different oversight functions. Responsibility for quality control of regulatory management tools is frequently coupled with at least one other function. In the same vein, the bodies responsible for the systematic improvement and advocacy for regulatory policy are often also in charge of the evaluation of regulatory policy, or the provision of guidance and training of regulatory management tools. In contrast, combined responsibility for legal scrutiny and quality control, or legal scrutiny and one of the other oversight functions is not frequent – supporting the assumption that legal quality is not a core regulatory policy oversight function.

The presence of multiple ROBs can serve different purposes such as separating the functions performed by ROBs to avoid potential conflicts of interest; allowing for further specialisation in each function; and even outsourcing some of the functions performed by ROBs. However, the multiplication of the number of ROBs can also create risks of fragmentation, lack of consistency in the co-ordination of regulatory policy, and reduce accountability.

The reporting of multiple bodies in the *2018 OECD Regulatory Policy Outlook* is the consequence of the *adoption of a very broad definition of regulatory oversight in the OECD 2012 Recommendation*. The need to capture a variety of experience in OECD member countries explains the choice of a broad, partly functional, partly institutional definition of oversight. Several countries have however intensified their efforts in the better regulation domain since then, opening new fronts and broadening the scope of their regulatory governance tools. This has also come with the need to involve a variety of bodies such as competition authorities, public think tanks, productivity commissions, and more. As a result, there is a need to narrow down the scope of the original definition, to enable a more precise identification of the bodies in charge of core functions of regulatory oversight such as the ones identified in Table 1.1, and differentiate them from a number of institutions that do not qualify as ROBs under this definition. This approach also allows for a more consistent and comparable approach across jurisdictions, which ultimately is a *sine qua non* condition for a quality analytical work.⁵

According to 2020 data, among core oversight functions, the most widespread remains quality control of RIA: about 75% of all ROBs, across jurisdictions, have it among their responsibilities. By contrast, only about 45% and 30% of all ROBs are responsible for quality control of stakeholder engagement activities and *ex post* evaluation of regulation respectively. The other two core functions considered, guidance on the use of regulatory management tools and systematic evaluation of regulatory policy are within the remit of about 70% and 55% of all ROBs respectively. The most frequent among “non-core” functions relate to

the systematic improvement of regulatory policy and advocacy across government (e.g. by proposing changes to the regulatory policy framework, promoting the use of good regulatory practices or ensuring institutional relations), in which about 75% of all ROBs are involved. About two-thirds of ROBs are in turn responsible for training and capacity building activities regarding the application of regulatory management tools, and nearly half of them for identifying areas of policy where regulation can be made more effective, e.g. by gathering opinions from stakeholders, preparing reviews of existing regulation or analysing the stock and/or flow of regulation. Scrutiny of the legal quality of regulation under development, in turn, is among the functions of nearly 40% of all ROBs (OECD, 2021^[6]).

Focusing on core functions allows to remove a number of bodies, including:

Better regulation units inside ministries/departments. Many countries, in order to strengthen the ownership of regulatory management reforms across the administration, appointed specific better regulation contact points or units in each of the major ministries, departments or agencies (or, in the case of the European Commission, Directorate Generals). These units are tasked with the oversight of better regulation activities in their own administration. This activity, however, does not make them responsible for overseeing the quality of the overall regulatory governance cycle, or any parts thereof. Accordingly, they are not considered as ROBs.

Audit bodies in some cases provide an *ex post* evaluation function, by evaluating samples of impact assessments and assessing the “value for money” of the entire regulatory governance cycle, or parts thereof. For example, the UK NAO analyses samples of impact assessments to report on their quality; the US GAO occasionally comments on the policy process and in particular RIA in agency rulemaking; and the European Court of Auditors, after a first audit of the EU impact assessment system in 2010, is currently scrutinising the *ex post* evaluation and stakeholder consultation functions at the EU level. But these are *ad hoc*, isolated exercises that do not amount to a regular undertaking of the oversight function: in other words, these bodies are not involved in the day-to-day management of the cycle, or parts thereof. Accordingly, audit bodies are not considered ROBs for the purposes of this study.⁶

Parliamentary committees.⁷ In some countries, dedicated political bodies are set up inside Parliaments, and tasked with scrutinising better regulation. However, these bodies seldom perform core oversight function. For example, the US Congressional Research Service (CRS) co-ordinates research work done to inform the decision-making process in Congress: however, the US better regulation agenda is focused on federal government regulation, not on Congress, and the CRS does not oversee or co-ordinate any activity related to the US regulatory governance cycle. In countries such as Italy and the UK, one of the Chambers of Parliament hosts a unit in charge of scrutinising impact assessments drafted by the executive. Such scrutiny does not amount to a quality control during the process of shaping the regulatory decision; rather, it is aimed at informing the future decisions by Parliaments on the proposals that have been tabled by the executive, and it rarely involves a dialogue with the authorities in charge of developing the impact assessments. Looking ahead, however, parliamentary bodies may take a greater interest in regulatory policy and adopt a greater oversight role. The case of the European Parliamentary Research Service set up in 2012, for example is less clear-cut. The EPRS notably focuses on assessing the European Commission’s impact assessments; on co-ordinating the outsourcing of impact assessments on proposed major Parliamentary amendments; and on overseeing impact assessments drafted by external contractors on Parliament’s own initiatives, and benefits from significant resources to do so.

Productivity commissions play a very important role in the better regulation system of some countries. The most established bodies of this kind, such as the Australian Productivity Commission and the homologue commissions set up in New Zealand and Chile, can be asked to review the quality of the regulatory process, and regularly carry out *ex post* evaluations of entire policy areas, most often in response to specific terms of reference submitted to them by the government. However, none of them performs any of the core functions of regulatory oversight in a systematic manner.

Public think tanks and advisory bodies often participate to the policy process with advisory roles, or even evaluation functions. For example, *France Stratégie* has been given evaluation powers for specific laws (e.g. the French law on innovation), and plays a key advocacy role for pro-productivity reforms. In the United States, the Council of Economic Advisors sometimes co-operates with the Office of Information and Regulatory Affairs (the US ROB) to validate the soundness of the economic analysis used in *ex ante* regulatory impact analyses (Renda and Dougherty, 2017^[12]), and can also advocate the adoption of economic reforms, normally directly addressing the President of the United States. At the EU level, the European Political Strategy Centre plays a similar role, but has no regular contact with the Regulatory Scrutiny Board or the Secretariat General of the European Commission - at least for matters related to the better regulation agenda. Other bodies, such as the German Council of Economic Advisors (or the German Council of Advisors on Innovation), the Dutch Bureau for Economic Policy Analysis (CPB) or the Irish National Competitiveness Council often play an advisory or evaluation role, but do not perform any of the core functions of regulatory oversight.

Behavioural Insights Teams operate whole-of-government programmes to experiment with the possibility of using nudging and other behavioural economics techniques to promote more effective public policy. These teams are now becoming more widespread in OECD countries, and have a more consolidated experience in particular in the UK, the US, and Denmark.

Ministerial units in charge of scrutinising the quality of legal drafting. As already mentioned, their role is not related to the regulatory governance cycle, but rather to the scrutiny of the legal quality of the drafting of regulatory and legislative proposals. This activity is not related to the soundness of the evidence and rationale that back the adoption of regulatory proposals, but rather to the clarity, consistency and interpretability of the legal text. As such, these bodies do not qualify as ROBs if they do not perform any further core oversight functions.

In many countries, **competition authorities** play a role in the performance of impact assessments, normally by providing assistance and advice on how to perform competition assessments. In some cases they also play an advocacy role, limited to the identification of possible pro-competition reforms such as market liberalisations. But the limited scope of their activity makes them very different from ROBs.

Ad hoc task forces created to generate policy recommendations, such as the Norwegian or Danish productivity boards, feature a very focused and limited-term mandate, and perform none of the core functions of regulatory oversight. As such, they are not considered as ROBs in this paper.

Permanent consultation bodies such as the Mexican Productivity Committee or the EU's REFIT platform (and the high-level group that was subsequently created by building upon its experience, the Fit for Future Platform) do not qualify as ROBs as they represent multi-stakeholder bodies in charge of advising the administration on possible areas for reform. They do not carry out any of the core functions of regulatory oversight, and are not "plugged in" the policy process.

Public training schools for civil servants provide training and sometimes also guidance on how to use and implement regulatory management tools; in this, they overlap with many ROBs who also perform this activity. But schools such as the French ENA, or the Italian SNA, are not given any mandate with respect to the oversight of the regulatory governance cycle and can thus not be considered as ROBs.

Budget and investment ministries/agencies, which (similarly to audit bodies) often have the task of distributing funds from the public budget in support of public investment projects, which must then be monitored and subject to final evaluation and reporting. These institutions oversee public expenditure but do not deal with the regulatory governance cycle, and as such cannot be considered as ROBs.

Trade ministries/units sometimes are granted horizontal competences for the monitoring of compliance with trade agreements. As highlighted by OECD analysis (Kauffmann and Saffirio, 2021^[15]), trade agreements increasingly contain regulatory provisions, including horizontal chapters on good regulatory practices or regulatory coherence. However, these chapters and related mechanisms (such as the specific

bodies they may establish) require the involvement of other institutions (than the trade ministries) to be implemented – in particular that of the core regulatory oversight body where it exists (for example Canada’s Treasury Board Secretariat in the case of CETA). These trade institutions, therefore, cannot be considered as ROBs. Ministries of foreign affairs are not considered ROBs either.

Notes

¹ For example, in the EU, the European Commission’s Secretariat General has co-ordinated a number of “fitness checks” or REFIT exercises that look at a whole policy area in an attempt to single out possible simplifications and welfare-enhancing reforms that would make legislation more “fit for purpose”. At the same time, the European Commission’s DG Enterprise (now DG GROW) has been experimenting with a number of “cumulative cost assessments”, which focus on specific industry sectors, and analyses the cumulative impact of various types of EU legislation on industrial firms’ costs.

² www.oecd.org/gov/regulatory-policy/8th-MRP-conference-proceedings.pdf.

³ We are aware that the scrutiny of legal quality often goes beyond the mere analysis of the drafting, and often encompasses more substantive tasks such as the analysis of the coherence of new proposals with the existing legal framework. For example, in Switzerland this task contains a so-called “präventive Rechtskontrolle/contrôle préventif de la conformité au droit” (see <https://www.admin.ch/opc/de/federal-gazette/2010/2187.pdf> for the German version and <https://www.admin.ch/opc/fr/federal-gazette/2010/1989.pdf> for the French version); i.e. an examination to ensure coherence with the existing legal framework and policies. This is a joint task of various offices (Federal Office for Justice, Federal Chancellery, Federal Finance Administration, etc.) which includes assessments of the compatibility of a law with the constitution, international law and budgetary law, as well as a scrutiny of the financial consequences of a draft law.

⁴ The Australian Productivity Commission does not plan the reviews. Rather, it executes them based on TORs provided by the executive.

⁵ The 2021 OECD Regulatory Policy Outlook applies a more restrictive definition of ROB by focusing solely on “core” functions of regulatory oversight undertaken on a systematic basis. For the sake of clarity and ease of reference, functions considered as core in the Outlook are: quality control of regulatory management tools; issuance or provision of relevant guidance on the use of regulatory management tools; co-ordination on regulatory policy and systematic evaluation of regulatory policy.

⁶ The 2021 OECD Regulatory Policy Outlook has considered certain audit bodies as ROBs for analytical purposes.

⁷ A small number of ROBs within Parliament (including the EPRS) are considered in the 2021 OECD Regulatory Policy Outlook (OECD, 2021^[6]).

2 Designing a ROB: key questions to address

Key institutional aspects that can affect the approach to regulatory oversight and ROB design

While the number of ROB's has grown over time, important differences exist around the scope of and overall institutional setting of regulatory oversight around the world. This section analyses some of the contextual reasons that shape such diverse landscape, such as the general objectives of regulatory reform as motivations that widely shape the tools and institutions involved and the pre-existing constitutional and administrative frameworks.

Examining the motivations for the introduction of regulatory reform by governments suggests a diverse taxonomy that also helps to explain the functions that different jurisdictions have assigned and prioritised when establishing ROB's. In particular, the most recurrent "official" motivations for regulatory reform are:

- **Efficiency/burden reduction**, aimed at securing that benefits are greater than costs, provided impacts can be safely and accurately monetised;
- **Transparency and accountability**, since the regulatory reform process obliges administrations to motivate their decisions and open their "black box" to external stakeholders;
- **Effectiveness and policy coherence**, which implies the use of tools to achieve the government's long-term plans and realise the government's agenda; and
- **Quality and institutional consistency of legal drafting**, which normally leads to the development of drafting manuals and the empowerment of institutions in charge of approving the proposed regulatory texts.

Regulatory reform goals largely determine the tools that need to be adopted. For instance, the predominance of the efficiency motivation over the policy coherence one (or specific non-economic impacts, e.g. the Irish former emphasis on reducing poverty) determines the prevalence of cost-benefit analysis over multi-criteria analysis. Furthermore, more complex and ambitious goals require greater oversight and co-ordination, while different goals call for different types of oversight and co-ordination mechanisms.

Motivations can also affect the choice of a ROB's location. For instance, countries emphasising specific (e.g. burden reduction or business facilitation) versus general objectives tend to locate ROB's in an administration such as the Treasury or the Ministry of the Economy (or even an external body) rather than the cabinet office. Countries that prioritise legal quality end up locating ROB's in the Ministry of Justice or Law (e.g. Estonia). At the same time, the overall scope of the regulatory reform strategy varies across countries. In some jurisdictions, better regulation tools such as RIA and consultation are limited to the government administration, whereas in others they are also applied by independent agencies, possibly even Parliaments.

Finally, emphasis on the policy cycle rather than merely on the *ex ante* phase of policy design also affects the scope of oversight activities. In the European Union after 2010 and (more recently) in the United States, emphasis on the policy cycle has become much stronger. As a result, new functions, such as the supervision of retrospective reviews, have been attributed to oversight bodies.

In addition to the broad goals of regulatory reform, many aspects of the constitutional structure and institutional setting of countries can influence the scope and mode of oversight (Cordova-Novion, C. and Jacobzone, S., 2011^[3]). These include the constitutional organisation of powers between branches and between different levels of government, administrative traditions and practices, as well as history and geography.

The constitutional organisation of powers between branches. In general, experts in the field have noted that Presidential systems such as Korea, Mexico or United States can more easily accommodate strong executive oversight bodies accountable to the president.

The constitutional organisation of power between different levels of government: The level of centralisation or decentralisation of powers can affect the way in which oversight and co-ordination are organised in a country. Firstly, the balance of powers between the central government and ministries can play an important role. For instance, highly centralised governments with ministries having comprehensive regulatory powers, like Switzerland or Nordic countries, have acted slowly and gradually before the creation of permanent oversight bodies. In highly decentralised countries and in those where the independence of agencies and ministries is recognised by the Constitution, a Constitutional reform was often a necessary step to overcome resistance and allow the whole-of-government use of impact assessment methodologies. In countries with a federal government structure like Australia, Canada, Germany or Mexico, while the ROB is only competent for federal regulation, advocacy powers were foreseen towards sub-national levels of government. More generally, multi-level governance creates additional needs for oversight and co-ordination between the federal and sub-national levels.

Administrative traditions and practices: Administrative practices and traditions, which vary widely between countries, can greatly influence the acceptance and effective operation of a ROB. In general, the use of co-ordination, monitoring and, in particular, challenge functions often meets with resistance in the bureaucracy. The best strategy to address this problem is highly dependent on the administrative culture. In Nordic countries, where administrative traditions are rooted in strong, accountable and autonomous bodies, with dispersed regulatory discretion, confrontational oversight is normally avoided, and the co-ordination function is emphasised. In Germany, co-operation and consensus-building are essential features of the federal executive, and the principle of ministerial autonomy makes the Chancellery a co-ordinator rather than a driver of policy making. The functioning of the College of Commissioners in the European Union is said to be influenced by a “collaborative harmony or collegiality” culture; this situation is usually compared with the more “adversarial” culture in the US. These cultural features of the administration influence the way in which ROBs have been set up and effectively operate.

History: Institutions are largely influenced by the historical context in which they are created and the political and economic circumstances that accompany their evolution. The creation and evolution of ROBs was often influenced by the observation of other countries’ experience, particularly in Europe. For example, the establishment of ACTAL in the Netherlands inspired the creation of Regulatory Councils in Germany, Sweden and, to some extent, also in the UK and the Czech Republic, eventually leading to a grouping of similar bodies in an *ad hoc* organisation (RegWatchEurope). The OECD has also exercised an important role by advocating the institutionalisation of regulatory policies and ROBs in Mexico, Korea and many other countries. The historical context also influences the evolution of ROBs, the expansion of their powers and their governance arrangements. For example, the UK’s *Better Regulation Executive* has experienced a series of significant institutional changes over time, including its location within government. In the Netherlands, the *Regulatory Reform Group* is an example of progressive broadening and integration of the regulatory reform agenda under a single oversight body.

Geography: The size and geography of a country can also influence the context in which regulatory reform and regulatory oversight operate. For instance, larger and highly populated countries often display strong oversight bodies; e.g. OIRA in the US and the Regulatory Scrutiny Board in the EU. Additionally, countries with extensive territory and a highly dispersed population might need special oversight and co-ordination arrangements.

ROB design modalities: an overview

While the existing challenges for the implementation of a whole-of-government approach to regulatory policy suggest the need for more centralised oversight, there seems to be no one-size-fits-all rule for the design of a regulatory oversight system, and consequently also for deciding whether and how to design a ROB. Based on the academic literature, there is a number of aspects to consider, including mandate, scope and focus, instruments and governance.

Mandate

The key role of regulatory oversight is to co-ordinate, supervise and facilitate the effective running of the regulatory governance cycle, and its consistency with the overall goals set by government in introducing regulatory reform (be that efficiency, well-being or a more articulated set of goals). This bears consequences for the choice of whether to appoint one or more ROB: the more complex and multi-faceted the regulatory policy agenda, the more complicated the oversight by one single body. More generally, the more complete the set of instruments to be applied and overseen, the more comprehensive the role of the ROB.

In order to fully achieve its mission, a ROB needs to be given a consistent mandate, which entails a full range of powers to control, supervise and influence the activity of the administrations in charge of policy portfolios. For instance, depending on the circumstances, a veto power on regulatory proposals might not be needed or relevant, especially if a ROB is located at the centre of government and fully represents the “principal” (for example, OIRA in the US does not have a formal veto power). Moral suasion in this case is sufficient to allow for a more “negotiated” relationship between the ROB and the agencies.

Results from the 2018 and 2021 *OECD Regulatory Policy Outlook* point to a strong legal backing of ROB. Indeed, the mandate of a majority of bodies is established either in law or statutory requirement, or alternatively in a presidential or cabinet directive. In addition, for many of them, this mandate has been revised or extended over time. For bodies responsible for quality control, mandates have frequently been broadened to cover additional regulatory management tools (e.g. to cover also parliamentary legislative initiatives in addition to regulations initiated by the executive), or further elements of the *ex ante* impact assessment process (OECD, 2018^[16]). In other cases, mandates have been extended to give bodies additional responsibilities as part of an overall reform or extension of the regulatory policy framework. For example, Italy overhauled its regulatory framework for RIA, *ex post* evaluation and consultation in 2017.

At the same time, oversight bodies face a number of challenges in carrying out their functions, such as difficulties in striking a good balance between independence of scrutiny and the connection to political decision-making and the reluctance of government officials to get involved in regulatory reform - which may lead to avoidance tactics aimed at circumventing the action of oversight bodies. Furthermore, oversight bodies are not always equipped with adequate skills and resources to be able to fulfil their tasks.

Number of ROB

The comprehensiveness of the policy cycle, the complexity of oversight and the need to ensure the achievement of a wide variety of goals can determine the “optimal” number of ROB. Two main factors are at stake here. On the one hand, economies of scale and scope in the performance of oversight functions,

the need to reduce transaction costs and the need to ensure an effective principal-agent relationship call for centralisation of oversight functions in the hands of a single institution. On the other hand, the need for specialised knowledge, to secure adequate checks and balances in oversight, and to account for specific regulatory outcomes (e.g., protection of SMEs, competition, protection of human rights, sustainable development, etc.) can lead to the appointment of additional bodies empowered with core oversight functions, in co-operation or in parallel with the main ROB.

Scope and focus of scrutiny

According to results from the 2017 iREG survey, oversight bodies focus particularly on scrutinising regulatory management tools for regulations originating from the executive. Almost all bodies indicate that they scrutinise RIAs, oversee stakeholder consultation processes and *ex post* evaluations for primary laws initiated by the executive and/or subordinate regulation. In contrast, less than 20% of bodies scrutinising RIA or stakeholder engagement also evaluate primary laws initiated by parliament. About one third of bodies scrutinising *ex post* evaluations looks at evaluations of legislation initiated by parliament. Bodies in charge of quality control for RIA overwhelmingly focus on the quality of evidence and compliance with formal requirements. Emphasis often falls on regulatory costs and impacts for businesses rather than on the assessments of regulatory benefits and impacts on citizens. These results may depend on the fact that ROBs have a specific mandate (e.g. to promote regulatory relief for businesses), but also on the fact that the former set of activities relies on more consolidated methodological tools.

Instruments

The mandate must be accompanied by suitable instruments. These notably include the power to scrutinise and oversee *ex ante* RIA and *ex post* evaluation, the power to request the opinion of other institutions (e.g. competition authority, anti-corruption and tax authorities), etc. Depending on the cases and on the specific institutional setting, a ROB might be called to act as an “adversarial gatekeeper” or as a friendlier “advisor”; also, some ROBs are asked to play a major role in the performance of policy appraisal and in the co-ordination of consultation, whereas others act as mere supervisors and delegate other functions to the individual administrations. At least two possible approaches exist: i) a system in which the ROB provides an independent assessment on the quality of a regulation either to the regulator directly or to the government in general, and either directly or by publication of its results (probably with a higher persuasive effect under a “name and shame” system); and ii) a (less recurrent) system in which the ROB is granted special powers to enforce either a general or a specific program in light of its proposed goals, with the consequence that the ROB acts as a gatekeeper with veto powers based on the quality of the regulation to be assessed.¹

Evidence from the 2017 iREG survey showed that oversight bodies responsible for quality control combine support functions and stronger control mechanisms. Nearly all surveyed bodies have an advice function, i.e. they report using support and advice mechanisms to build capacity for the use of regulatory management tools. A substantial number of these bodies issues formal opinions, although such opinions are not always made publicly available. Formal opinions on the quality of regulatory management tools are issued by almost all RIA quality control bodies, and also by about two thirds of bodies responsible for reviewing stakeholder engagement and *ex post* evaluation. About a third of bodies responsible for reviewing regulatory management tools, and especially those located at the centre of government, can block a regulation, requiring improvements before it can proceed to the next stage. This decision can be overturned in most cases, e.g. by Cabinet, the responsible Minister or a high-level official.

Autonomy and location

Different roles, mandates and instruments call for different degrees of independence of the ROB. If smart regulation is implemented as a form of whole-of-government agenda, as can be the case mostly in

presidential democracies, then the principal-agent scheme requires that the principal exercises its oversight role through a dedicated agency located as close as possible to the centre of government. The more regulatory reform is motivated by the need to enhance stakeholder involvement and government accountability for results, the stronger the incentive to set up a more hybrid or external ROB in charge of ensuring that government action keeps specific interests in the “radar”. The UK system, in which the Better Regulation Executive co-ordinates government action but most of the oversight functions are located within the Regulatory Policy Committee, is a good example of the need to combine both aspects of regulatory oversight by appointing more than one ROB. The articulation and distribution of regulatory oversight functions across locations is further examined in the *2021 OECD Regulatory Policy Outlook* (Box 2.1).

Box 2.1. Distribution of core regulatory oversight functions across locations (2021 OECD Regulatory Policy Outlook)

In OECD countries, ROBs located at the centre of government are entrusted with a relatively broad range of functions. As may be expected, they are by far the preferred location for functions where centrality is essential, such as co-ordination-related matters (e.g. promotion of joined up approaches to regulatory quality and the consistent application of relevant tools) and provision of guidance on the use of regulatory management tools. These functions are within the remit of about 80% and 75% of all ROBs at the centre of government respectively.

ROBs in other parts of government also have a diverse range of responsibilities. Those located in Ministries of Economy, Finance or Treasury tend to focus on quality control of regulatory management tools (about 80% of all ROBs in that location scrutinise RIAs) and are also involved in providing guidance and training as well as in identifying potential areas for improvement. ROBs located at Justice Ministries focus on reviewing the legal quality of proposals, although not exclusively: the vast majority of them issue guidance and more than 70% are involved in RIA scrutiny to some extent.

Non-departmental bodies have a clear focus on RIA scrutiny: all of them were reported to have it among their responsibilities. Approximately 45% and 35% of them scrutinise stakeholder engagement and *ex post* evaluations respectively. They are also heavily involved in the systematic evaluation of regulatory policy, as more than three quarters of them have this among their functions. ROBs external to government, in turn, focus on reviewing the quality of regulatory management tools, chiefly of RIA, as well as on the systematic evaluation of regulatory policy and the identification of areas for regulatory improvement.

Source: (OECD, 2021^[6]).

The role, mandate and degree of independence of a ROB determine the choice of where to locate it. Two different choices can be distinguished here:

- *Whether to locate the ROB inside the government administration.* Typically, a ROB can be located at the centre of government (e.g. in the cabinet office), in the Ministry of Economy/Finance, or in the Ministry of Justice/Law. The choice depends on two major factors: i) the administration in which most of the skills and expertise is located; and even more importantly, ii) the scope of the oversight activity to be provided and the mandate of the ROB. In some countries, the Ministry of Finance has traditionally hosted more skilled and also more numerous economists and policy analysts compared to the cabinet office. Concerning the type of oversight, countries focusing on the quality of the legal drafting (alongside or independently of economic impact analysis) tend to locate most of the oversight efforts in the Ministry of Justice. At the same time, countries that have almost

exclusively focused on monitoring and reducing administrative burdens tend to see a major involvement of the ministry in charge of business development.

- *Whether to locate the ROB inside or outside government.* The more regulatory reform is aimed at regulatory coherence and the realisation of the government’s agenda for the electoral period, the more likely and appropriate it will be that the oversight body is located inside government. External bodies could in turn be an appropriate choice for reasons such as the following: i) a parliamentary democracy might locate the oversight body inside the parliament to enhance the scrutiny capacity of the assembly with respect to government’s legislative decrees (especially when the scope of smart regulation tools such as RIA includes primary legislation); ii) when regulatory oversight is mostly focused on the quality of public spending, it might make sense to empower the audit office or a court of audit; iii) when regulatory reform targets a particular group of stakeholders, which is sufficiently concentrated (and/or expected to possess relevant information available to the policy makers), it might make sense to establish a hybrid or a totally external ROB with a more limited mandate; iv) when governments want to signal their commitment to high-quality regulatory reform, they may have an incentive to appoint a high-level academic committee in charge of supervising the choices made by government.

The merits of different approaches to oversight location and degree of autonomy are presented in Table 2.1 and reflect discussions at a 2016 OECD conference on “Realising Impact”.

Table 2.1. Merits and challenges of different oversight models for *ex ante* and *ex post* evaluation

Body in charge of regulatory oversight	Merits	Challenges
Line ministry	<ul style="list-style-type: none"> • performs RIA for a particular type of impact 	<ul style="list-style-type: none"> • no integrated approach to regulatory oversight • may lack authority/credibility • may face more pressure for exemptions
Central government	<ul style="list-style-type: none"> • can take on a bird’s eye view • access to information from different parts of government 	<ul style="list-style-type: none"> • may be too far from decision-making processes
Independent body	<ul style="list-style-type: none"> • provides an independent view to parliament and the general public 	<ul style="list-style-type: none"> • actor that is involved in the development of regulations at a late stage • not all regulations pass through parliament
Parliament	<ul style="list-style-type: none"> • independent from government 	

Source: (OECD, 2016^[17]).

Mechanisms for co-ordination between ROBs

A core function of ROBs is the co-ordination of regulatory policy and regulatory reform at different levels. A ROB needs to co-ordinate its work with that of ministries and departments in order to effectively fulfil its tasks and exercise its powers.² When more than one ROB exists, it is also important that they co-ordinate their functions and work together towards a whole-of-government regulatory policy. Additionally, there is a need for appropriate mechanisms of co-ordination between national and sub-national levels.

Results from the *OECD Regulatory Policy Outlook 2018* showed that most countries have more than one ROB, and in most of them, the oversight and co-ordination functions are divided between the different ROBs, so that each body takes care of one aspect of regulatory reform, e.g., simplification, deregulation, reducing red-tape, RIA oversight, etc. Nonetheless, in order to embrace a whole-of-government regulatory policy, it is important to enable mechanisms of co-ordination and networking between all ROBs, even when they have a clear division of tasks between them. The more ROBs belong to the same department or

ministry, the easier it is to co-ordinate their functions but the more it is difficult to identify the limits between one and the other.

More specifically, the following forms of co-ordination emerge in different countries:

- “Hub and spoke” structure: a “main ROB” collects the opinions and inputs of more specialised bodies before completing one of its functions, but takes ultimate responsibility for the oversight and co-ordination.
- Sequential structure: one ROB deals with the early phases of policy evaluation and hands over to another ROB the subsequent phases.
- Parallel ROB: there is very little or no co-ordination between ROB, they act independently on their specific specialised mandate.

Co-ordination may be formal (i.e. through memoranda of understanding or procedural rules) or informal (through informal meetings and consultations). There is however limited information related to the way in which inter-ROB co-ordination is achieved, which makes it a crucial area for future research.

Evaluation of ROB

Another important question related to the activity of ROB is how these bodies are evaluated. Assessing the performance of institutions is a complex exercise, which in the case of ROB would require, among other prerequisites, that national policy goals and the specific goals of the ROB under examination are clearly established. This will allow to assess the impact that a ROB may have in terms of achieving such goals in a certain period of time. As already noted by (Cordova-Novion, C. and Jacobzone, S., 2011^[3]), further work is required in terms of indicators of performance, perception surveys and other methods to analyse the impact of ROB in regulatory reform and better regulation programmes.³

Box 2.2. Performance assessment and accountability

The role, mandate, degree of independence and location of a ROB determine its degree of accountability as well as and performance evaluation modalities (if any). ROB located at the centre of government and in charge of overseeing full-fledged RIA systems would normally be accountable to the Prime Minister and can be subject to *ex post* evaluation by audit offices (government or judiciary). Ad hoc external bodies that represent specific stakeholders would normally be accountable to their specific constituencies, e.g. SMEs. More generally, accountability can be ensured in two ways: i) through transparency, i.e. by making the ROB’s activities visible to external stakeholders and imposing a motivation for their actions and opinions expressed; and ii) through specific evaluation by government or independent bodies. This can also be ensured by giving the ROB a time limit for the execution of its task, at the end of which the decision of whether to extend its mandate will be adopted. Most often, countries display a combination of the two modes.

Among the factors that influence the complexity of evaluating the performance of a ROB, the design of policy goals and targets and the assessment methodologies stand as the more critical ones. The simpler the policy goals, and/or the simpler the assessment methodology used, the easier it will be to assess the performance of such policy goals, the quality of the assessment methodologies and hence the overall performance of a ROB. Targets for policy objectives such as the reduction of administrative burdens and administrative simplification will be easier to establish. Likewise, the application of methodologies such as the Standard Cost Model (SCM), measures such as the guillotine, or the application of sunset clauses for *ex post* review will be easier to assess. Nonetheless, as it has been previously pointed out by Wiener and

Alemanno: “Despite the widespread enthusiasm for cutting red tape, it is not always obvious that cutting administrative burdens is desirable. Subjecting administrative burdens to a benefit-cost test (as for other regulations) would be superior to simply enforcing arbitrary burden reduction targets” (Wiener, J.B. and Alemanno, A., 2011^[18]).⁴

Given the complexity of evaluating the performance of institutions in the field of regulatory reform and better regulation (beyond some of the cases mentioned above), most evaluations actually concentrate on a particular sector. Some evaluations focus on the work done by ministries and agencies with regard to assessment methodologies, e.g. RIA, SCM. Other reports refer to consultation mechanisms, *ex post* analysis or reviews, reduction of administrative burdens, administrative simplification and/or burden reduction programs. This latter area is the one in which most countries produce annual or periodical reports and performance indicators are better developed (OECD, 2014^[19]).

The different degrees of independence and the different functions and targets embedded in the mandate of the various ROB are associated with different modes of evaluation. These include:

- **Explicit third-party evaluations** (could be spontaneous or mandatory) of the activity of the ROB, including the achievement of specific targets.
- **Third-party evaluation** within the broader context of an evaluation of the whole regulatory policy, or part thereof (e.g. the RIA system).
- **Implicit third-party evaluation** through the evaluation of the performance of the chair and employees of the ROB (when they are civil servants).
- **Implicit self-evaluation** through periodical reporting (especially if the report comments on specific performance/success indicators, rather than merely describing the activity performed during the period to which the report refers).

Further insights into evaluation practices can be found in the OECD compilation of Case Studies of RegWatchEurope regulatory oversight bodies and of the European Union Regulatory Scrutiny Board (OECD, 2018^[16]) as well as in chapter 3 of the 2021 OECD Regulatory Policy Outlook.

Notes

¹ In practice, some systems may be in the middle of either approach, for instance, Cordova-Novion and Jacobzone (op. cit., p. 11) mention that in; “some countries like Australia, approval of the adequacy of each RIA is required from the oversight body before the regulatory action proceeds. Depending on the power of the oversight body some opinions can in effect become nearly impossible to ignore”. In the United States, OIRA has the authority to return draft regulations to agencies for reconsideration.

² For the co-ordination function of ROB with the administration and specially co-ordination arrangements with ministries, see Cordova-Novion and Jacobzone (op. cit.), at p. 43-45 and Table A-3.

³ Following the scheme suggested in the *Politics of Policies*, Cordova-Novion and Jacobzone suggest that there are six dimensions that need to be assessed: i) policy coherence and co-ordination; ii) institutional stability; iii) adaptability and responsiveness; iv) strategies and approaches for implementation, v) engaging the regulatory disciplines, and vi) forging of a political constituency.

⁴ In addition, “The fact that one option would impose lower administrative costs is not in itself a sufficient reason to prefer it. For example, a measure ... likely to impose relatively fewer administrative costs [by mandating specific technical standards, instead of requiring labels that disclose product data]...could give manufacturers less flexibility and could reduce consumer choice, [so that] its overall costs may be higher than the ‘administrative’ requirement to display data” (Wiener, 2007^[20]).

3 Conclusions

The increasing demand for evidence-based, comprehensive and future-proof approaches to policy making has created a strong need for institutionalising oversight and co-ordination by means of dedicated regulatory oversight bodies (ROBs). These institutions can be instrumental in bringing about a whole-of-government approach to regulatory reform and regulatory quality.

While the involvement of a variety of entities in regulatory policy can bring benefits, it is important to bear in mind that the multiplication of the number of ROBs can also create risks of fragmentation and lack of consistency in the co-ordination of regulatory policy and reduce accountability. For a meaningful analysis of regulatory oversight systems, and to avoid conflating too many institutions under the same umbrella definition, this paper introduces a distinction between core and non-core functions of regulatory oversight. “Core” functions are those essential for overseeing the substantive quality and evidence-based nature of the regulatory governance cycle, or significant parts thereof (e.g. scrutiny of ex ante impact assessments and ex post evaluations). Conversely, “non-core” functions, while otherwise useful and important, are ancillary to oversight and may be performed by entities or institutions that do not oversee the substantive quality and evidence-based nature of the regulatory governance cycle (e.g. training and capacity building within the administration). Only institutions that perform at least one core function fall within the definition of ROB adopted in this paper.

In addition to the broad goals of regulatory reform, there are many aspects of the institutional setting of countries that can influence the scope and mode of oversight, such as the constitutional organisation of powers between branches and between different levels of government, administrative traditions and practices, as well as history and geography. There seems to be no one-size-fits-all rule for the design of a regulatory oversight system or for deciding whether and how to design a ROB. Key aspects to consider include the mandate, scope and focus of the ROB, as well as its core instruments and governance.

Future research could explore more in-depth several key aspects pertaining to regulatory oversight. There is, for example, limited information as to how inter-ROB co-ordination is achieved. In a similar vein, since attempts to evaluate the performance of institutions in the field of regulatory reform and better regulation tend to be relatively narrow in focus, a broader and deeper approach may help to improve regulatory quality substantially over time.

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