

General perspectives from the first reviews

This section provides an overview of initial findings from the project, based on the reviews of the countries in the first batch, and including some preliminary perspectives from the second batch of countries. The comments below are complemented by Section E, which sets out initial findings from the project in more detail, issue by issue, based on the structure of the individual reports. It should be noted that none of the first batch is a federal state. This and other differences across the three batches means that the findings are indeed preliminary and need to be treated with caution, and will of course need to be updated.

Better Regulation (BR), at least in very broad terms, is a concept that is now understood both by governments, and key external stakeholders. There has been a step change over the last ten years, from legal quality as the reference point, to Better Regulation, a much broader and more fundamental concept. In the first OECD reviews of the late 1990s, regulatory management was much less well understood as a concept.

The value of BR for effective policy and law making is now understood to go well beyond support for reform of the infrastructure sectors and product markets. This was a central preoccupation of the first OECD reviews, when market liberalisation was the main focus. Policies for the reduction of administrative burdens draw countries into regulatory reviews of labour and tax laws for example, which is not always without controversy. Worries about climate change draw them into a range of other policies with prominent regulatory agendas, from energy conservation to transport management. The relationship and contribution of BR to policy development (whether or not this gives rise to the development of laws and regulations) is emphasized by at least one country.

Drivers of BR today cover a range of public policy goals; political support remains important. BR is now recognized as an important part of effective public governance. It no longer appears to require a crisis to sustain it or give it renewed impetus, and it has successfully survived changes in government in the reviewed countries, as well as becoming stronger. The countries studied mainly have a good record of well-functioning economies over recent years. Fears for future competitiveness and living standards, rather than current problems, are driving further BR efforts in some countries. However, confidence and momentum need to be actively sustained across electoral cycles (and now especially, in the wake of the financial crisis and economic recession). Political commitment still matters, especially when it comes to sustaining resources for BR efforts. In some cases the commitment and enthusiasm of dedicated individual officials makes a key difference.

Better Regulation rather than deregulation is the key concept. There is some concern from external stakeholders that emphasis on the business community and its needs, in those countries where this is the main focus, particularly through programmes to reduce their administrative burdens, has put the focus on costs at the expense of the benefits of regulation. The same stakeholders, however, also generally emphasise that they understand the distinction between “more regulation” and Better Regulation, and the importance of only supporting regulation that is effective and necessary.

There is, however, scope for further discussion of issues such as what is meant by an explicit policy for Better Regulation. Views can differ on the exact meaning of Better Regulation, its scope, and some key institutional concepts such as monitoring and oversight bodies, and how these should be organised.

The reviews show a perhaps surprising amount of development over the past two-three years, and still further development as the reviews were being conducted (a challenge for keeping the drafts up to date). Even relatively recent data and reviews (such as country reviews conducted by the OECD in 2005) need to be validated again.

“Minding the gap” between principles and practice is important. Some countries may appear to meet technical requirements for BR processes, but a closer examination suggests that their effective application in practice may have some way to go.

There is a concern that the number of regulations is increasing. While data needs further analysis to substantiate this point, there is a strong perception of increasingly regulated societies, which was raised by many interviewees. There is a link to risk- increasingly risk adverse societies put pressure on governments to regulate, but other factors seem to play a part. A government that engages in significant structural or other reforms will generate a net growth in regulation if there is no effective mechanism to restrain this.

There is some uncertainty over the exact sources of the rising burdens. Given increasingly complex institutional structures, a range of players, regulators, but also implementers and enforcers of regulation, could be making a “contribution”. EU-origin regulations play a large and probably growing role. National authorities which have measured their administrative burdens have used the data to calculate that the proportion of EU-origin regulations making up the whole might be in the range 40-50% of the total.

Public governance traditions, cultural and geographical differences matter. One size does not fit all, if one excludes a commitment to the broad principles of BR, coverage of its key components, and acknowledgment of its importance for effective public governance. For example consultation processes in small countries, both within and outside government, can take advantage of proximity.

“Multilevel governance” has yet to take off as an integrated policy. Initiatives to reach down to the local levels of government and up to the EU are developing fast, and in some countries are given substantial resources and prioritisation, but there is nothing very joined up about them.

There is a growing interest in and need for a vision and strategy for the coming decade of BR. Countries are keen to see into the future, and in some cases the economic crisis has sharpened interest in how BR can support the recovery process. It is now ten years or so since BR emerged from the narrow confines of legal quality. This is especially important in Europe, as it implies deciding what happens after 2010, a key date for assessing progress under the Lisbon strategy and the EU Action Programme for reducing administrative burdens.

Detailed findings from the first reviews

Project Baseline	Key findings	Questions for debate
Drivers of Better Regulation		
<p><i>Justifications for BR and link with public policy goals</i></p>	<p>The justification for BR varies between countries. As might be expected, economic growth, competitiveness and the needs of business, which are the motors of the EU Lisbon strategy, are usually (not always) prominent reasons for engaging in BR policies. Not all countries, however, cite only these factors. For some, the justification is also associated with societal goals such as sustaining quality public services and making life easier for citizens. This is then reflected in a different range and balance of BR policies, with more effort for example on reducing burdens for citizens. BR can have strong and mutually reinforcing links with public sector reform.</p> <p>International good practice is considered important. Most of the countries want to know about good practice from other countries, and to know where they stand in international rankings- they are keen to learn from each other, and this can also be a driver of change.</p> <p>Substantiating the link between BR policies and the achievement of public policy goals, including economic performance, is a challenge. There is little analysis by countries to support generalized arguments in favor of a positive link. Yet this is critically important for sustaining support for BR over the long run. One factor might be that such evidence can only be built at the cross-national level where there is sufficient statistical variance and material to build the proof. These are more challenging to construct at the national level. Many governments focus on the estimates that have emerged from SCM based administrative burden reduction programmes. These involve baseline measurements of burdens that can be translated into a percentage of GDP, which normally yields a suitably “scary” figure. These have been used as powerful policy and communication tools to drive change across government ministries and agencies.</p>	<p>BR is not an end in itself- it is “process” not “outcome”. How best to substantiate the link between BR processes (effectively applied) and positive outcomes for the economy and society?</p>

Strategy and Policies for Better Regulation		
<p><i>Overall strategy</i></p> <p>Regulatory policy may be defined broadly as an explicit, dynamic, and consistent “whole of government” policy to pursue high quality regulation. A key part of the OECD’s 2005 Guiding Principles for Regulatory Quality and Performance is that countries adopt broad programmes of regulatory reform that establish principles of “good regulation”, as well as a framework for implementation. Experience across the OECD suggests that an effective regulatory policy should be adopted at the highest political levels, contain explicit and measurable regulatory quality standards, and provide for continued regulatory management capacity.</p>	<p>It is rare to have a fully “joined up” BR strategy, and a clear overall strategy is often difficult to identify. BR policies tend to be scattered across different parts of government. This can mean that high level political support is weakly expressed, achievements understated, and that BR is not always clearly linked to high level public policy goals.</p> <p>The scope of BR policies has developed, and now extends to cover new risk based approaches to enforcement, administrative burden reduction programmes that reach out to citizens and inside the administration as well as to businesses.</p> <p>The quality of some more established BR policies has generally improved. This includes consultation processes, procedures and forward planning for new regulations. Ex ante impact assessment (see below) remains a weak area.</p> <p>Securing an appropriate balance between BR policies is an issue. BR policies if well developed and applied consume resources and officials’ time. The pendulum over the last few years in parts of Europe appears to have swung in favor of significant effort and resources for policies aimed at the reduction of administrative burdens on business. Policies for the management of new regulations with one notable exception appear to have received comparatively less attention.</p>	<p>How important is it to have a “joined up” BR strategy? How can this be achieved? Are there issues of balance between policies?</p>
<p><i>Communication of BR strategy and policies</i></p> <p>Effective communication to stakeholders is of growing importance to secure ongoing support for regulatory quality work. A key issue relates to stakeholders’ perceptions of regulatory achievements (business, for example, may continue to complain about regulatory issues that are better managed than previously).</p>	<p>Communication appears to be a growing issue for the more mature BR countries. This manifests itself most clearly in the communication issues which are being experienced with business administrative burden reduction programmes, where there is an issue of perceptions of progress which appear to undervalue the real progress being made. Communication issues, however, are not just about this one policy. A lack of appreciation and understanding of the whole picture and overall progress can be an issue, including for some inside government.</p>	<p>What should public communication focus on? Should it focus on specific programmes such as reduction of burdens? Is there a need for a broader picture to be communicated? If so what?</p>

<p><i>Ex post evaluation of BR strategy and policies</i></p> <p>Governments are accountable for the often significant resources as well as political capital invested in regulatory management systems. There is a growing interest in the systematic evaluation of regulatory management performance - "measuring the gap" between regulatory policies as set out in principle and their efficiency and effectiveness in practice. How do specific institutions, tools and processes perform? What contributes to their effective design? The systematic application of <i>ex post</i> evaluation and measurement techniques can provide part of the answer and help to strengthen the framework.</p>	<p>Ex post evaluation of the effectiveness of BR policies and strategy has improved but tends to be ad hoc. Countries often carry out specific exercises, often with the help of their National Audit Office. But this is often not systematic, and not all programmes are covered. Also, a broad assessment of progress, achievements and weaknesses is often still missing. Incoming governments like to "reinvent the wheel". This reinvention could be usefully informed by analysis of past policies. Linked to this, there is often little collective knowledge among today's civil servants of the history of past achievements and failures.</p>	<p>What should be the priorities for ex post evaluation exercises (given resource constraints)? For the strategic picture, is it enough that external reviewers such as the OECD, World Bank and others carry out (occasional and ad hoc) reviews?</p>
<p><i>E-government in support of BR strategy and policies</i></p> <p>E-government is an important support tool for Better Regulation. It permeates virtually all aspects of regulatory policy from consultation and communication to stakeholders, to the effective development of strategies addressing administrative burdens, and not least as a means of disseminating Better Regulation policies, best practices, and guidance across government, including local levels.</p>	<p>E-government is proving to be an essential support tool for the effective deployment of BR policies. Transparency, effective consultation processes and communication now rely very largely the extensive use of websites for information and increasingly interactive tools such as searchable databases and online consultation and exchanges. E-government is also used to implement more business and citizen friendly administrative procedures. More fundamentally, in one country at least, e-government is the driver of BR policy, in the context of broader reforms to the public administration aimed at culture change. E-government is, however, resource intensive, and the technical architecture can easily become fragmented without a reasonably strong central direction. Its uptake by the local levels of government can be uneven. These issues appear to need attention in some countries.</p>	

Institutional capacities for Better Regulation		
<p><i>General context</i></p> <p>Regulatory management needs to find its place in a country's institutional architecture, and have support from all the relevant institutions. The institutional framework within which Better Regulation must exert influence extends well beyond the executive centre of government, although this is the main starting point. The legislature and the judiciary, regulatory agencies and the sub-national levels of government, as well as international structures (notably, for this project, the EU), also play critical roles in the development, implementation and enforcement of policies and regulations.</p> <p>Parliament may initiate new primary legislation, and proposals from executive rarely if ever become law without integrating the changes generated by Parliamentary scrutiny. The judiciary may have the role of constitutional guardian, and is generally responsible for ensuring that the executive acts within its proper authority, as well as playing an important role in the interpretation and enforcement of regulations. Regulatory agencies and sub-national levels of government may exercise a range of regulatory responsibilities. They may be responsible (variously) for the development of secondary regulations, issue guidance on regulations, have discretionary powers to interpret regulations, enforce regulations, as well as influencing the development of the overall policy and regulatory framework.</p> <p>The OECD's previous country reviews highlight the fact that the institutional context for implanting effective regulatory management is complex and often highly fragmented. Approaches need to be customized, as countries' institutional settings and legal systems can be very specific, ranging from systems adapted to small societies with closely knit governments that rely on trust and informality, to large federal systems that must find ways of dealing with high levels of autonomy and diversity.</p>	<p>The institutional reach of BR policies has expanded. A few years ago the focus was almost exclusively on central government (within a country). Parliaments are increasingly present, and local levels of government have also been drawn into BR.</p> <p>Complex institutional environments, with multiple actors playing a role in regulation, emerge as a key factor in the reviews. Future progress will depend on a more sophisticated understanding of all the actors involved, how they connect, and what they each contribute.</p> <p>Minding the gap between principles and practice. BR policies are often well defined on paper but putting them into effective practice is proving more elusive. Tools and processes may be defined at a strategic level, but considerable work is then needed to give them concrete substance at the practical level of policy and law making. This appears to be especially true of ex ante impact assessment.</p> <p>Culture change is a "work in progress", and capacities and resources to implement BR policies need reinforcement. A linked challenge is spreading culture change and new approaches to carrying out familiar tasks across the whole of government, even in the more "mature" BR countries. There are no magic bullets and the process takes time. There is, not surprisingly, a strong link to broader public sector management and reforms, for example emerging efforts to link BR with performance appraisal systems and ministry budgets. Drawing in the local levels of government –which is essential– raises issues of capacity and resources for BR at that level.</p>	<p>Mind the gap? How can culture change be further promoted?</p> <p>What role should each actor have, taking into account accountability, feasibility, and balance across government? What is the best way to secure effective institutional oversight of Better Regulation policies?</p>

Key institutions		
<p><i>a. The executive centre of government.</i></p>	<p>A single central BR unit with full coverage and control of all the relevant BR issues is a challenge to set up, and some countries question whether this is the only approach. Even where one appears to exist it does not cover everything –perhaps because there is too much to cover in complex modern societies, not just for internal political reasons. A new approach to the central institutional driver for BR may be emerging, with a radial network of relationships fostered by a BR unit which does not necessarily integrate all the relevant ministries, supported by a well-functioning network of government committees and flanked by an external advisory group with a challenge function. This definition is an aggregate of the most effective parts of the structures currently found in the reviewed countries.</p>	<p>Can a more networked approach to BR institutional management be an effective alternative to a single central unit? What are the basic requirements that need to be met for effective institutional steering and monitoring of BR?</p>
<p><i>b. Regulatory agencies</i> (The term covers a broad variety of bodies charged with regulatory functions, including among others the inspectorates and enforcement agencies, beyond the economic regulators which have received more attention in the past).</p>	<p>The role of regulatory agencies varies across countries. In some countries, regulatory agencies appear to play an increasingly important role, in a wide variety of settings (not juts, for example, as economic regulators for the network sectors). They are probably more numerous than a few years back and some governments, conscious of this, are trying to cut them back, or to rationalise their structures. Agencies appear to play an ambiguous role in the promotion of BR. They are increasingly associated with the BR policies of the central executive. They often have valuable “hands on” understanding of business and citizen needs. At the same time their independence from the central executive, which varies, can lead to a fragmentation of BR approaches which is confusing for stakeholders, even if for broader institutional reasons, it is important that they should preserve their own room for manoeuvre.</p>	<p>How important are regulatory agencies in the BR context, and to what extent should they (can they) be subject to the same BR practices as ministries (e.g. as regards impact assessment, consultation)?</p>

<p><i>c. The legislature</i></p>	<p>The role and interest of parliaments in BR appears to be growing, even if the pace and nature of the interest differs across countries. This seems to be regardless of the nature of a country's political system: whether they are driven by coalitions or based on a dominant party does not seem to matter, though it does affect the specific way in which parliament interacts with the executive. Some countries have committees that take a specific interest in BR processes such as impact assessments. More often, there are no special BR committees, which poses a challenge for the diffusion of effective messages regarding BR. In some parliaments officials take the lead, in others individual members emerge as BR "champions". An emerging challenge is how to « join up » the efforts of the central executive and the legislature in a positive way. Some parliaments appear to play a valuable challenge function with regard to draft regulations and this could be more effectively used by the executive, whereas others make possibly excessive demands on the government to account for its BR policies.</p>	<p>There are underlying and necessary tensions between the roles of the executive and the legislature in rule-making. What form should the dialogue take between the executive and parliament on BR, what should it seek to cover? To what extent is it possible to envisage a shared agenda and interest in certain issues (legal quality, impact assessment, consultation)?</p>
<p><i>d. The judiciary</i> (The importance of the judiciary in the regulatory framework depends to a large extent on the country's legal system, but is likely to extend beyond appeals)</p>	<p>Underlying legal systems vary and the role of the judiciary varies accordingly. In Continental European systems the scope for "changing" the substance of a regulation may be far less than in common law based systems. However judicial or quasi judicial entities may play a key role in assessing the constitutionality of a law, and are increasingly drawn into the EU dimensions. There is some anecdotal evidence of a growth in the role of the judiciary, with more frequent judicial reviews against the background of increasingly litigious societies.</p>	<p>To what extent should the judiciary be taken into account in BR policy?</p>
<p><i>e. Local levels of government</i></p>	<p>There are some determined efforts to reach out to the local levels of government. This movement has given rise to interesting new initiatives aimed at strengthening co-operation between central government and the often fiercely autonomous and politically sensitive local levels of government, even in so called unitary states. BR is now seen as a concept that has to embrace local levels. The question has turned to how this can best be achieved.</p>	<p>What can be learnt from existing initiatives to engage local levels of government more strongly in BR?</p>

<p><i>f. Other key players (e.g. audit offices, external advisory bodies to government)</i></p>	<p>National audit offices and external advisory bodies often play a significant role to challenge and monitor BR progress. In some countries, the national audit office plays an important role evaluating progress. The same is true of independent oversight bodies, where these exist (not everywhere).</p>	<p>To what extent are external and independent advisory bodies helpful in promoting BR and “keeping governments on their toes”?</p>
<p><i>Resources and training</i></p> <p>Continuous training and capacity building within government, supported by adequate financial resources, contributes to the effective application of Better Regulation. Beyond the technical need for training in certain processes such as impact assessment or plain drafting, training communicates the message to administrators that this is an important issue, recognised as such by the administrative and political hierarchy. It can be seen as a measure of the political commitment to Better Regulation. It also fosters a sense of ownership for reform initiatives, and enhances co-ordination and regulatory coherence.</p>	<p>Training for BR skills (such as impact assessment) is patchy. It is usually addressed as an add-on to more general training for civil servants, although there are developments towards more specialized training.</p> <p>BR now consumes more resources within governments. Against the common background in Europe of public sector and civil service cuts which is driven by the need for efficiency gains to combat the effect of ageing populations and sustain social welfare systems, BR must increasingly justify its share and fight for any increase. At the same time, civil service cuts can concentrate the mind wonderfully for necessary change and “doing things differently”. There is some evidence of this at work, for example with the move towards more proportionate and risk based enforcement in some countries.</p>	<p>Are traditional skills such as legal quality in danger from a more “economic” perspective on rule-making?</p>
	<p>Legal quality remains important, as well as the development of economic skills. The growing attention and resources allocated to BR policies such as ex ante impact assessment and administrative burden reduction may be undermining good practice in law making, including attention to legal quality, but also policies to rationalize and codify the regulatory stock, which appear to receive less attention today. Economists may be displacing lawyers in the fight for resources and attention. This may be a welcome corrective to past legal dominance, but both skill sets are needed.</p>	

<p>Transparency through consultation and communication</p>		
<p><i>General context</i></p> <p>Transparency is one of the central pillars of effective regulation, supporting accountability, sustaining confidence in the legal environment, making regulations more secure and accessible, less influenced by special interests, and therefore more open to competition, trade and investment. It involves a range of actions including standardized procedures for making and changing regulations, consultation with stakeholders, effective communication and publication of regulations and plain language drafting, codification, controls on administrative discretion, and effective appeals processes. It can involve a mix of formal and informal processes. Techniques such as Common Commencement Dates (CCDs) can make it easier for business to digest regulatory requirements. The contribution of e-government to improve transparency, consultation and communication is of growing importance.</p>	<p>E-government policies are having a particularly strong and positive impact in this area of BR.</p> <p>A major distinction needs to be made between those countries with a "corporatist" tradition and others with a more "anglo saxon" tradition. In the former case, open forms of consultation are not part of the tradition, which relies instead on established committees and the social partners.</p>	<p>How can the demand for transparency be met when there is pressure to act fast, as during the current crisis?</p>
<p><i>Public consultation on regulations</i></p>	<p>Consultation processes have improved, helped by e-government. Efforts are being made to reach out to all relevant stakeholders where this is not already the case, and to deploy a range of processes to facilitate the task for consultees, though this is still a "work in progress". Tools and processes need attention- issues raised have included lack of feedback in some cases, uneven quality, keeping to the response time, need to vary the methods. In countries with a corporatist tradition, there is a trend away from these traditions and toward a more open approach, without losing the old approaches entirely. Administrative burden reduction programmes have been a strong motor for the development of more open consultation.</p>	<p>Should there be a debate about the way forward on public consultation, to address the fact that there are different issues which may need different treatment (projects in their early stages, whole processes such as administrative burden reduction programmes, specific draft laws)? And different instruments (internet portals, expert meetings, green or white papers etc)?</p>
<p><i>Public communication on regulations</i></p>	<p>Access to regulations is generally strong, but a work in progress in some cases. It is increasingly linked to the deployment of ICT. Not all regulations are always covered, depending on the underlying legal system (codified systems are usually stronger in this regard). Common Commencement Dates for the entry into force of new regulations are beginning to spread.</p>	

<p>The development of new regulations</p>		
<p><i>General context and procedures for making new regulations</i></p> <p>Predictable and systematic procedures for making regulations improve the transparency of the regulatory system and the quality of decisions. These include forward planning (the periodic listing of forthcoming regulations), administrative procedures for the management of rule-making, and procedures to secure the legal quality of new regulations (including training and guidance for legal drafting, plain language drafting, and oversight by expert bodies).</p>	<p>Trends in new regulations are not always monitored systematically, but this could be a useful measure of the effectiveness of policies to manage the flow of new regulations.</p> <p>Procedures for the development of laws are reasonably robust. Most countries have procedures for the development of laws (if not secondary regulations). These are not always formal (via administrative procedure laws) but they are usually clearly set out in guidance. Most countries also have scrutiny of draft laws by a body other than the proponent ministry. Most countries have some arrangement for forward planning, which is not always so robust. Legal quality needs to be sustained. Plain language is sometimes an issue. Guidance notes to explain regulation may need attention. There is a noticeable overlap in some countries between the (traditional) procedures for the development of regulations, and the (newer) impact assessment processes, the two processes not always being very joined up.</p>	<p>Is it useful/appropriate to measure trends in the number of new regulations? How should this be done? Is Have some countries lost track of their regulatory stock, and does this matter? Are guidance notes (to explain regulations) an issue that needs more attention?</p>
<p><i>Ex ante impact assessment of new regulations</i></p> <p>Ex ante impact assessment of new regulations is one of the most important regulatory tools available to governments. Its aim is to assist policy makers in adopting the most efficient and effective regulatory options (including the “no regulation” option), using evidence-based techniques to justify the best option and identify the trade-offs involved when pursuing different policy objectives. The costs of regulations should not exceed their benefits, and alternatives should also be examined. However the deployment of impact assessment is often resisted or poorly applied, for a variety of reasons, ranging from a political concern that it may substitute for policy making (not true-impact assessment is a tool that helps to ensure that a policy which has already been identified and agreed is supported by effective regulations, if they are needed), to the demands that it makes on already hard pressed officials. There is no single remedy to these issues. However experience around the OECD shows that a strong and coherent focal point with adequate resourcing helps to ensure that impact assessment finds an appropriate and timely place in the policy and rule making process, and helps to raise the quality of assessments.</p>	<p>Requirements have generally been reinforced but often need further (significant) development. IA often does not yet make a real difference to outcomes (it is applied too late in the process). Some countries’ processes have not evolved much further than legal quality mechanisms already in place. There is an important but not always clearly articulated link between IA processes and administrative burden reduction programmes, which usually have net targets (<i>i.e.</i> they capture new regulations, at least as far as the business dimension is concerned).</p> <p>The broader institutional context for policy making (not just law making) needs to be understood first, before it is possible to work out how/where/when IA can be more effectively embedded. This is a strong emerging conclusion from the reviews.</p> <p>A range of specific issues need attention. There is a need to establish effective evaluation and measures of success (did an IA influence the outcome?). The role of parliament should not be neglected. Are/should all regulations and rule makers such as agencies be covered –taking account of the principle of proportionality? Other issues often needing attention include: fragmented policies, weak</p>	<p>How can the gap between principles of effective impact assessment and practice be bridged? What matters most for this (robust institutional monitoring, political commitment, methodology based on quantification etc.)?</p>

<p>Effective consultation needs to be an integral part of impact assessment. Impact assessment processes have- or should have- a close link with general consultation processes for the development of new regulations. There is also an important potential link with the measurement of administrative burdens (use of the Standard Cost Model technique can contribute to the benefit-cost analysis for an effective impact assessment).</p>	<p>institutional support frameworks, quality assurance (uneven application of IA), and capacity/resource issues in implementing ministries.</p>	
<p><i>Alternatives to regulation</i></p> <p>The use of a wide range of mechanisms, not just traditional “command and control” regulation, for meeting policy goals helps to ensure that the most efficient and effective approaches are used. Experience shows that governments must lead strongly on this to overcome inbuilt inertia and risk aversion. The first response to a problem is often still to regulate. The range of alternative approaches is broad, from voluntary agreements, standardisation, conformity assessment, to self regulation in sectors such as corporate governance, financial markets and professional services such as accounting. At the same time care must be taken when deciding to use “soft” approaches such as self regulation, to ensure that regulatory quality is maintained.</p>	<p>The reviews have not been able to address this aspect in any depth. That said, it is not clear that alternatives to regulation are given adequate attention, or have been developed significantly since the last OECD reviews. Alternatives are certainly deployed, but suited to the country’s particular conditions. For example, some countries use self regulation linked to their traditions of giving social partners and others room for participation in regulatory management. Encouragement to consider alternatives is not always strong in the IA processes. It sometimes surfaces in the context of the development of risk based approaches to rule making and enforcement (no regulation zones for example). Guidance on alternatives to command and control regulation can be relatively weak and out of date.</p>	<p>Is it time to engage a debate on alternatives, perhaps linked to risk, and “refresh” the definition of alternatives?</p>
<p><i>Risk based approaches</i></p> <p>An issue that is attracting increasing attention for the development of new regulations is risk management. Regulation is a fundamental tool for managing the risks present in society and the economy, and can help to reduce the incidence of hazardous events and their severity. A few countries have started to explore how rule-making can better reflect the need to assess and manage risks appropriately.</p>	<p>Risk based approaches to the development of new regulations are under discussion and analysis in the more mature BR countries. Practical tools and processes are not yet in place, and new approaches are some way from becoming operational.</p>	<p>What more could or should be done to further integrate risk perspectives in the development of new regulations?</p>

<p>The management and rationalisation of existing regulations</p>		
<p><i>Simplification of regulations</i></p> <p>This chapter covers two areas of regulatory policy. The first is simplification of regulations. The large stock of regulations and administrative formalities accumulated over time needs regular review and updating to remove obsolete or inefficient material. Approaches vary from consolidation, codification, recasting, repeal, <i>ad hoc</i> reviews of the regulations covering specific sectors, and sun setting mechanisms for the automatic review or cancellation of regulations past a certain date.</p>	<p>The trend is for systematic codification programmes of the regulatory stock to be displaced by administrative burden reduction programmes, which are not the same thing. Codification seems to have been quietly abandoned in favor of different more ad hoc approaches such as selective targeting of regulatory clusters under administrative burden reduction programmes.</p>	<p>Should codification remain an important BR process?</p>
<p><i>Reduction of administrative burdens</i></p> <p>The second area concerns the reduction of administrative burdens and has gained considerable momentum over the last few years. Government formalities are important tools to support public policies, and can help businesses by setting a level playing field for commercial activity. But they may also represent an administrative burden as well as an irritation factor for business and citizens, and one which tends to grow over time. Difficult areas include employment regulations, environmental standards, tax regulations, and planning regulations. Permits and licenses can also be a major potential burden on businesses, especially SMEs. A lack of clear information about the sources of and extent of administrative burdens is the first issue for most countries. Burden measurement has been improved with the application by a growing number of countries of variants on the standard cost model (SCM) analysis to information obligations imposed by laws, which also helps to sustain political momentum for regulatory reform by quantifying the burden.¹</p> <p>A number of governments have started to consider the issue of administrative burdens inside government, with the aim of improving the quality and efficiency of internal regulation in order to reduce costs and free up resources for improved public service delivery. Regulation inside government refers to the regulations imposed by the state on its own administrators and public service providers (for example government agencies or local government service providers). Fiscal</p>	<p>The effective deployment of e-government is of increasing importance as a tool for reducing the costs and burdens of regulation on businesses and citizens, as well as inside government.</p> <p>Administrative burden reduction programmes are flourishing, not just for the business community but also for citizens, and public sector workers inside government.</p> <p>Administrative burden reduction (businesses). Generally good results are emerging with the achievement of reduction targets and (sometimes) the setting of new ones. Programmes usually have a quantitative target with a fixed timeline (same as the EU 2012 date, or a date ahead of the EU). Targets are net targets ie programmes cover new as well as existing regulations, the burdens from new regulations are counted in the assessment of whether targets are being met. The best programmes make an explicit link with ex ante impact assessment for this (the burdens of new regulations must be part of the documentation available to decision makers).</p> <p>The means by which burdens are being addressed often include clusters of laws which are causing a large part of the problem. Fiscal burdens may not be included. Some programmes are experiencing a loss of momentum. It is</p>	<p>What relative importance should be attached at this stage to administrative burden reduction programmes in BR strategy?</p>

<p>restraints may preclude the allocation of increased resources to the bureaucracy, and a better approach is to improve the efficiency and effectiveness of the regulations imposed on administrators and public service providers.</p>	<p>hard to run the “last kilometer” once the “low hanging fruits” have been picked. Attempts are being made to extend the reach of some programmes and integrate full compliance costs, with some difficulty. Running programmes on the basis of the full traditional SCM methodology is expensive, and newcomers are experimenting with lighter approaches.</p> <p>Business often remains unhappy, despite the efforts and achievements. The reasons for this are complex. Efforts are being made to work more closely with business in order to identify the real issues for them (including irritants), rather than the issues identified by civil servants. Negative business perceptions may have roots in substance as well as presentation and communication, for example concerns about effective control of the flow of new regulations which cancel out achievements on the regulatory stock. There is a need to engage local governments, where this is not already being done, as they are usually a key interface with business.</p> <p>Administrative burden reduction (citizens). Programmes to address burdens on citizens have appeared, using the experience of the business programmes. They are often considered important (as are programmes addressing public sector workers) for political economy reasons, <i>i.e.</i> to show that the state at the service of citizens, not just business. A soft version of the SCM methodology is often used and targets are not usually quantified, raising issues of how progress can be monitored.</p>	
	<p>Administrative burden reduction (regulation inside government). Programmes to address burdens on frontline public sector workers (e.g. teachers, police) are also evident, as part of efforts to improve public services and their efficiency.</p>	

Compliance, enforcement, appeals		
<p><i>Compliance and enforcement</i></p> <p>Whilst adoption and communication of a law sets the framework for achieving a policy objective, effective implementation, compliance and enforcement are essential for actually meeting the objective. An <i>ex ante</i> assessment of compliance and enforcement prospects is increasingly a part of the regulatory process in OECD countries. Within the EU's institutional context these processes include the correct transposition of EU rules into national legislation (this aspect will be considered in chapter 9).</p> <p>The issue of proportionality in enforcement, linked to risk assessment, is attracting growing attention. The aim is to ensure that resources for enforcement should be proportionately higher for those activities, actions or entities where the risks of regulatory failure are more damaging to society and the economy (and conversely, proportionately lower in situations assessed as lower risk).</p>	<p>Measurements of compliance rates are not always carried out systematically. Some countries suggest this is unnecessary and that it is more important to focus on effective enforcement.</p> <p>Risk based methods of enforcement are taking root, with significant efforts to develop a proportional approach to inspections based on whether a business is considered high or low risk. Risk based approaches are spreading rapidly, partly to help reduce burdens on businesses.</p>	<p>Should compliance rates be monitored systematically? And if so, how?</p> <p>Where can risk-based approaches be most appropriately applied?</p>
<p><i>Appeals</i></p> <p>Rule-makers must apply and enforce regulations systematically and fairly, and regulated citizens and businesses need access to administrative and judicial review procedures for raising issues related to the rules that bind them, as well as timely decisions on their appeals. Tools that may be deployed include administrative procedures acts, the use of independent and standardized appeals processes², and the adoption of rules to promote responsiveness, such as "silence is consent".³ Access to review procedures ensures that rule-makers are held accountable.</p> <p>Review by the judiciary of administrative decisions can also be an important instrument of quality control. For example scrutiny by the judiciary may capture whether subordinate rules are consistent with the primary laws, and may help to assess whether rules are proportional to their objective.</p>	<p>The reviews have not been able to address this aspect in any depth. Most countries have a well developed hierarchy of appeal routes, though its precise nature varies a lot. Not many issues have been picked up. Judicial review may be a growing issue, but has not been mapped, and there can be problems with delays in court decisions.</p>	

<p>The interface between subnational and national levels of government</p>		
<p><i>General context :responsibilities at the local level</i></p> <p>Multilevel regulatory governance- that is to say, taking into account the rule-making and rule-enforcement activities of all the different levels of government, not just the national level- is another core element of effective regulatory management. The OECD's 2005 Guiding Principles for Regulatory Quality and Performance "encourage Better Regulation at all levels of government, improved co-ordination, and the avoidance of overlapping responsibilities among regulatory authorities and levels of government". It is relevant to all countries that are seeking to improve their regulatory management, whether they are federations, unitary states or somewhere in between.</p>	<p>Municipalities generally have a critical interface with business and citizens, through their responsibilities for public services, enforcement of national regulations, licensing and planning roles. However responsibilities can vary a lot across countries. For example some local levels have significant powers of enforcement whereas in others this is shared with national agencies. Funding and the relative autonomy in practice of local levels also varies, as does the political system (elections etc) which will define the nature of the relationship with central government. In all cases so far, however, it is clear that the local level values its autonomy, and does not take kindly to instructions from the centre.</p>	
<p>In many countries local governments are entrusted with a large number of complex tasks, covering important parts of the welfare system and public services such as social services, health care and education, as well as housing, planning and building issues, and environmental protection. Licensing can be a key activity at this level. These issues have a direct impact on the welfare of businesses and citizens. Local governments within the boundaries of a state need increasing flexibility to meet economic, social and environmental goals in their particular geographical and cultural setting. At the same time, they may be taking on a growing responsibility for the implementation of EC regulations. All of this requires a pro active consideration of:</p> <ul style="list-style-type: none"> • the allocation/sharing of regulatory responsibilities at the different levels of government (which can be primary rule-making responsibilities; secondary rule-making responsibilities based on primary legislation, or the transposition of EC regulations; responsibilities for supervision/enforcement of national or sub-national regulations; or responsibilities for service delivery) • the capacities of these different levels to produce quality regulation • the co-ordination mechanisms between the different levels, and across the same levels 	<p>BR policies deployed at local level.</p> <p>The extent to which local levels are engaged in BR policies is variable. There are growing efforts by central governments to address the national –local interface for BR, including efforts to include local levels in specific programmes such as administrative burden reduction. Local governments' own efforts at BR are also apparent, via their associations, or through the initiatives of specific municipalities.</p> <p>Progress appears easier when there has been some rationalisation of structures (for example reducing the number of local governments, or their layers). BR at this level is driven not so much by the imposition of obligations (which is politically very sensitive, even in unitary states) but more via the reinforcement of co-operative mechanisms and exchanges between the central and local levels.</p> <p>Culture change has started at this level, but it is not clear how far it has spread. Changes are resource intensive. There is a need to monitor capacity/competence issues at local level. Promoting best practice needs further effort.</p> <p>Co-ordination.</p> <p>Initiatives are being taken to strengthen co-ordination, especially where this was weak in the first place with the deployment of some innovative institutional or other arrangements in some cases. These arrangements are relatively new, but have the considerable merit of opening up a positive dialogue between central government and the local levels.</p>	<p>Is the fiscal/economic crisis generating a reassessment of what should best be regulated at or by sub-national levels?</p>

The interface between member states and the EU		
<i>General context</i>	The EU was (perhaps not surprisingly) a strongly recurring theme across the interviews for the first reports. Interaction with the EU over BR is growing. Countries are anxious to influence EU policies for regulatory management, in order to avoid problems down the line with the creation of unnecessary burdens in transposition. There are, for example, concerns that policies such as EU IA should work effectively so as to minimise unnecessary burdens or unhelpful consequences of new regulations. There is considerable interest in the BR policies being deployed at EU level, from a range of actors- regulatory agencies as well as central ministries. In some cases considerable energy and resources are put into these issues.	What are the implications of EU trends for cross-border regulatory co-operation more generally among OECD and non-member countries?
<i>Negotiation and transposition</i> An increasing proportion of national regulations originate at EU level. Whilst EC Regulations ⁴ have direct application in member states and do not have to be transposed into national regulations, EC Directives need to be transposed, raising the issue of how to ensure that the regulations implementing EC law are fully coherent with the underlying policy objectives, do not create new barriers to the smooth functioning of the EU Single Market, avoid “gold plating” and the placing of unnecessary burdens on business and citizens. Transposition also needs to be timely, to minimise the risk of uncertainty as regards the state of the law, especially for business.	Where there are effective and longstanding processes in place for handling EU regulations, these appear to work well, especially as regards negotiation. Transposition of EU origin regulations into national law can prove problematic. Goldplating and complex national regulations that do not always make sense appears to be a lurking danger, for which there are several possible causes, such as a wish to maintain high standards, but also a worry that transposition that does not follow the exact wording of a directive may be challenged. The speed of transposition seems to have improved in recent years, and there is certainly an awareness of its importance. Monitoring of transposition rates could be improved in some cases.	
<i>Interaction on BR with the EU level</i> The national (and subnational) perspective on how the production of regulations is managed in Brussels itself is important. Better Regulation policies, including impact assessment, have been put in place by the European Commission to improve the quality of EC regulations. The view from “below” on the effectiveness of these policies may be a valuable input to improving them further.	Securing a greater coherence in the timing of national and EU IA processes on the same regulation appears to be an issue that requires attention. Attention has also been drawn to the need for EU proposals to better reflect the national efforts at implementing a more risk based and proportionate approach to enforcement.	What needs to be done in order to improve the interaction between EU level impact assessment and national level impact assessment?

NOTES

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1. Programmes to reduce administrative burdens may include the review and simplification of whole regulatory frameworks or laws, so there can be some overlap with policies aimed at simplification via consolidation etc. There may also be some overlap with the previous chapter on the development of new regulations, as administrative burden reduction programmes are often conducted on a net basis, that is, taking account of the impact of new regulations in meeting target reductions.
 2. Administrative review by the regulatory enforcement body, administrative review by an independent body, judicial review, ombudsman.
 3. Some of these aspects are covered elsewhere in the report.
 4. Not to be confused with the generic use of the term “regulation” for this project.