

**REALISING IMPACT: THE ROLE OF INSTITUTIONAL FRAMEWORKS
IN REGULATORY POLICY**

8th OECD Conference on Measuring Regulatory Performance

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THE INSTITUTIONAL FRAMEWORK FOR REGULATORY POLICY

SCOPING NOTE

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INTRODUCTION

1. The 2012 [OECD Recommendation of the Council on Regulatory Policy and Governance](#) (OECD, 2012; further referred to as the Recommendation) 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”. The Recommendation outlines a wide range of institutional functions and tasks to promote high quality evidence-based decision making, enhance the impact of regulatory policy, and provide regulatory oversight. At the same time, institutional frameworks for regulatory policy need to be responsive to economic and societal changes and innovations in order to provide for a dynamic regulatory environment that supports productivity growth and inclusiveness.
2. Results from the [OECD Regulatory Policy Outlook 2015](#) (OECD, 2015b; further referred to as the Outlook) show that the institutional setting for regulatory policy is heterogeneous across the OECD membership. Oversight bodies perform a range of different functions to support, co-ordinate, scrutinise and improve regulatory policy. Still, investments in institutional frameworks for regulatory policy seem to be less in the focus of government activities than the systematic adoption of regulatory policy tools through the establishment of formal requirements, the development of a methodology to apply these tools and the setup of measures to enhance the transparency of regulatory policy practices.
3. The Outlook and the [7th OECD Conference on Measuring Regulatory Performance](#) in Iceland identified a high potential for improvements to the institutional framework for regulatory policy in OECD countries to bridge the gap between formal requirements and implementation, leading to higher impact of regulatory policy on economic and social outcomes (OECD, 2015a). The 8th OECD Conference on Measuring Regulatory Performance in Sydney, which will focus on “Realising impact: the institutional frameworks for regulatory policy”, aims to identify effective ways to improve institutional frameworks for regulatory policy to drive inclusive growth. Discussions will centre on the institutional design, powers and degree of independence needed for conducting and overseeing regulatory policy in order to ensure high-quality results. Results of the conference will feed into key work of the OECD Regulatory Policy Committee, such as the *OECD Best Practice Principles* on stakeholder engagement, *ex ante* and *ex post* evaluation of regulations, the *Regulatory Policy Outlook* series, and future OECD work on the institutional set up for regulatory reform.
4. This note summarises key findings on the institutional frameworks for regulatory policy from the Outlook, analysis of the [2015 Indicators of Regulatory Policy and Governance](#), the Outlook’s main evidence base, and further existing OECD publications. The note aims to provide background information on the institutional setting for regulatory policy and the functions of regulatory oversight bodies as a basis for the conference discussions..

THE INSTITUTIONAL SETTING FOR REGULATORY POLICY

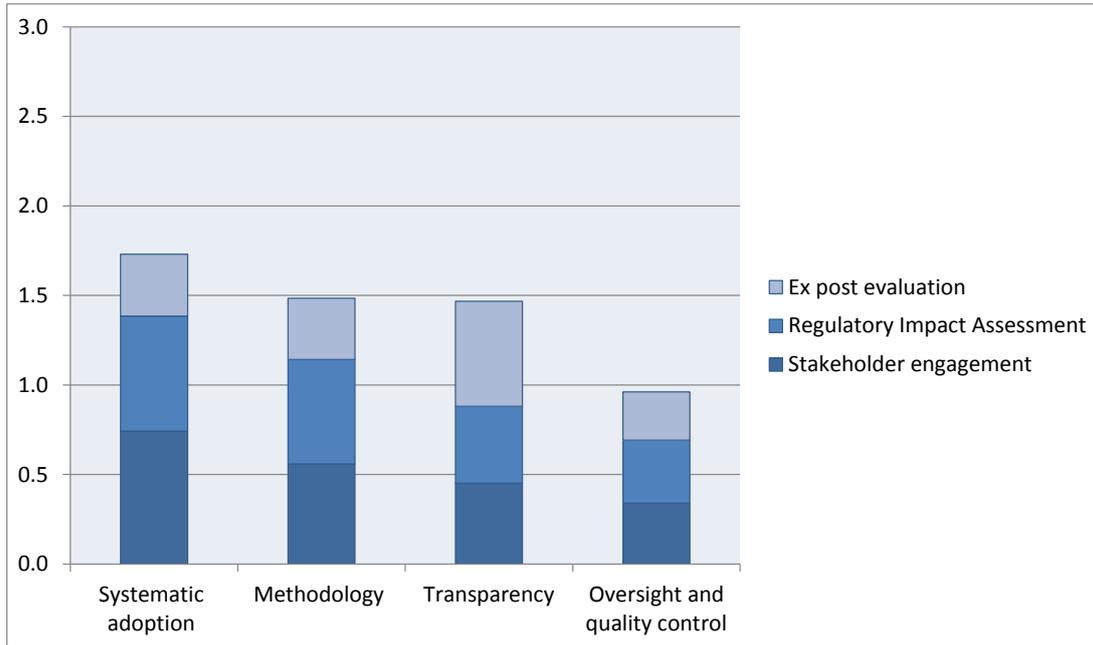
5. The use of evidence-based policymaking suggests a strong motivation for institutionalising oversight and co-ordination functions. Evidence-based policymaking is chiefly based on the assumption that administrations can systematically use analytical tools and structured decision-making processes to improve regulatory quality, and that they will use such tools consistently and in different phases of the life of a legal rule (Castro and Renda, 2016).

6. Oversight bodies can support the systematic implementation of regulatory policy in various ways. Quality control by an oversight body places incentives on civil servants to better and more consistently use instruments such as Regulatory Impact Assessment (RIA), consultation and ex post evaluation of regulation. Secondly, oversight may also help governments align their incentives for the use of better regulation instruments in support of long-term policy goals within the administration. A central oversight and co-ordination function implementing a whole-of-government approach to regulation is furthermore helpful to manage the stock and the flow of regulation, e.g. by conducting comprehensive reviews of the stock of legislation. Finally, several co-ordination activities facilitating the implementation of regulatory policy and governance can be performed by an oversight body. This includes the training of civil servants and drafting of guidelines on how to use regulatory policy tools; the establishment of minimum standards for consultation of stakeholders; and the overall regulatory planning to be carried out for the whole administration (ibd.).

7. Despite their important role in regulatory governance, oversight and quality control mechanisms seem to still be less developed than other elements of regulatory policy, such as the systematic adoption, the methodologies used and transparency practices in place for regulatory policy tools. Recent analysis carried out by the OECD Secretariat on the basis of the [2015 Indicators of Regulatory Policy and Governance](#) compares OECD countries' composite indicator scores across three key tools of regulatory policy: stakeholder engagement, RIA and ex post evaluation of regulation in four key dimensions: systematic adoption, methodology, transparency, and oversight and quality control¹. It is striking that oversight and quality control practices are least developed for all three tools, and are particularly weak for ex post evaluation (Figure 1; OECD, 2016).

¹ Each of the three composite indicators for stakeholder engagement, RIA and ex post evaluation is composed of the same four categories, which provide critical information on the building blocks of regulatory policy: *Systematic adoption* records formal requirements and how often these requirements are conducted in practice; *Methodology* gathers information on the methods used in each area, e.g. the type of impacts assessed or how frequently different forms of consultation are used; *Transparency* records information from the questions that relate to the principles of open government, e.g. whether government decisions are made publically available; and *Oversight and quality control* records the role of oversight bodies and publically available evaluations. Further information on the indicators is available at <http://www.oecd.org/gov/regulatory-policy/indicators-regulatory-policy-and-governance.htm>.

Figure 1. Components of regulatory policy by regulatory policy tool

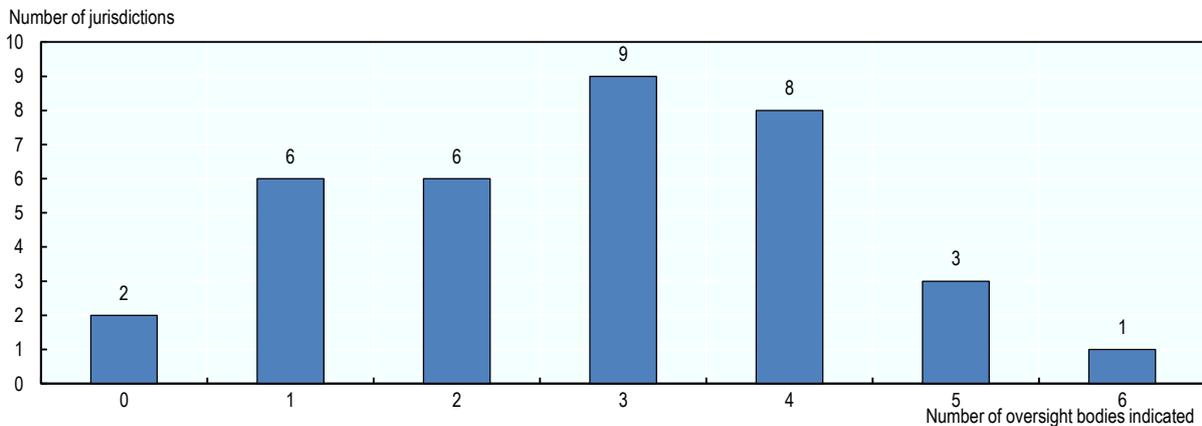


Source: OECD 2016

Note: Scores represent the average of primary laws and subordinate regulations, except for the scores of Regulatory Impact Assessment and Stakeholder Engagement for the United States, for which only the results for subordinate regulations are used. The maximum score for each regulatory policy tool is one, and the maximum aggregate score is 3.

8. Findings from the Outlook show that most countries have instituted either single or multiple oversight bodies to ensure regulatory quality (33 jurisdictions of the 35 surveyed). Strikingly, the majority of countries report not one but several oversight bodies (Figure 2). On average, countries report 2.8 oversight bodies. Twenty one countries have three or more oversight bodies. This raises the question of the allocation of responsibility across the different bodies and the need for intergovernmental co-ordination. While specialisation may be warranted, too much fragmentation could also erode a whole-of-government approach (OECD, 2015b).

Figure 2. Number of oversight bodies per country/jurisdiction

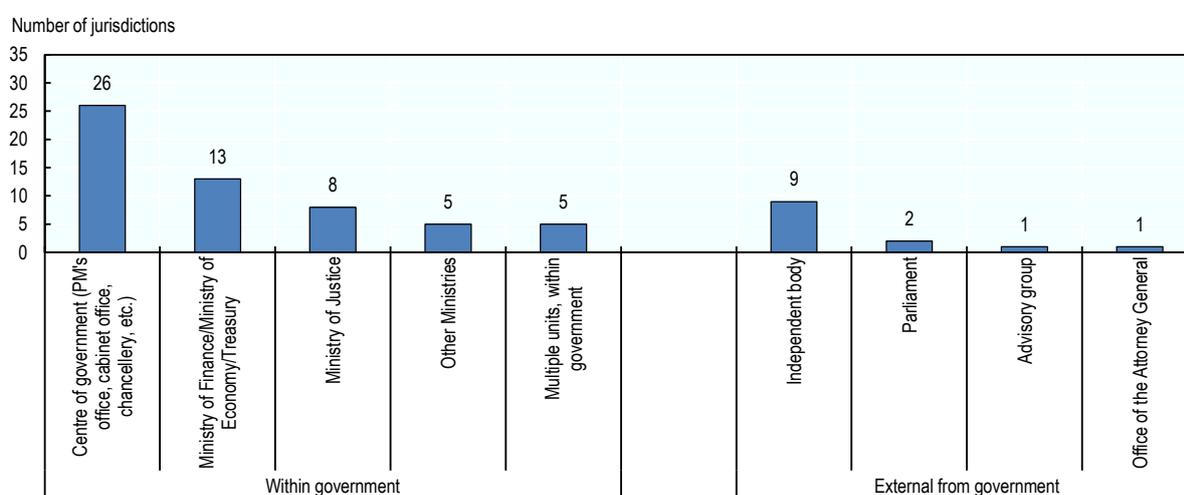


Note: Based on data from 34 countries and the European Commission.

Source: OECD (2015b), *OECD Regulatory Policy Outlook 2015*, <http://www.oecd.org/gov/regulatory-policy/indicators-regulatory-policy-and-governance.htm>.

9. A majority of countries (26 out of 35) have at least one oversight body located at the centre of government (e.g. the prime minister’s office or cabinet office) (Figure 3). In addition, many countries have at least one body based in the Ministry of Economy, Finance or Business (13 countries) which can reflect a focus on monitoring and reducing administrative burdens. This choice of location may also be due to the technical nature of the work. In 8 countries, one oversight body is located in the Ministry of Justice, indicating a focus on the quality of the legal drafting (alongside or independently of economic impact analysis) (ibd.).

Figure 3. The location of oversight bodies



Note: Based on data from 34 countries and the European Commission.

Source: OECD (2015b), *OECD Regulatory Policy Outlook 2015*, <http://www.oecd.org/gov/regulatory-policy/indicators-regulatory-policy-and-governance.htm>.

10. Since 2008, one can note the emergence of independent oversight bodies as a new institution in the regulatory policy architecture. A number of European independent regulatory oversight bodies have even established a network to exchange experience and co-ordinate on their activities². Depending on the rationale for their establishment and the concrete tasks they perform, these bodies may be located at different positions outside of government (ibd.). For example,

- 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.
- 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;
- When regulatory reform targets a particular group of stakeholders, which is sufficiently concentrated (and/or expected to possess relevant information available to the policymakers), it

² For further information, please see <http://www.actal.nl/english/regwatcheurope/>.

might make sense to establish a hybrid or a totally external oversight body with a more limited mandate;

- 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;
- Finally, when performing the technical functions of assessing and advising on the quality of impact assessments, the OECD Recommendation of the Council on Regulatory Policy and Governance states that the oversight body should be independent from political influence (though this does not necessarily demand complete independence from government).

THE FUNCTIONS OF REGULATORY OVERSIGHT BODIES

The functions of oversight bodies according to the 2012 Recommendation

11. According to the 2012 Recommendation, “the regulatory oversight body should be tasked with a variety of functions or tasks in order to promote high-quality evidence-based decision making” (OECD, 2012). These functions and responsibilities can be seen as aiming to answer the deficits of regulation and the shortcomings of the regulatory policy agenda. In particular, oversight bodies have a role to play in *i*) solving the lack of consistency and continuity in regulation; *ii*) encouraging ministries to engage stakeholders in the regulatory process in an inclusive and transparent way to address the participation deficit; *iii*) promoting greater responsiveness and effectiveness of regulation through the use of tools that support the gathering of evidence; and *iv*) training regulators to enhance the efficiency of regulation by becoming more adaptable and flexible in the use of their regulatory instruments. Table 1 summarises these functions, areas of responsibility and locations of oversight bodies.

Table 1. The functions of oversight bodies

Areas of responsibility	Functions	Location
Consultation/stakeholder engagement Legal quality Administrative simplification RIA Ex post evaluation Other (e.g. de-regulation agenda or e-government)	<p>Quality control</p> <ul style="list-style-type: none"> • Scrutinise evaluations • Challenge unsatisfactory tools or processes • Review legal quality <p>Identifying areas of policy where regulation can be made more effective</p> <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 <p>Systematic improvement of regulatory policy</p> <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 <p>Co-ordination of regulatory tools</p> <ul style="list-style-type: none"> • Encourage the smooth adoption of the different aspects of regulatory policy at every stage of the policy cycle. <p>Guidance and training</p> <ul style="list-style-type: none"> • Issue guidelines • Provide assistance and advice to regulators for performing assessments 	<p>Within government</p> <ul style="list-style-type: none"> • Centre of government (e.g. PM's office, cabinet office) • Ministry of Finance / Ministry of Economy / Treasury • Ministry of Justice • Other ministries <p>External to government</p> <ul style="list-style-type: none"> • Independent bodies • Parliament • Advisory group • Office of Attorney General

Source: OECD (2015b)

12. Based on the 2012 Recommendation, the functions involve firstly “quality control”, i.e. the task of improving the quality of impact assessments, by providing scrutiny of individual policy evaluations and challenging proposals that are not accompanied by a satisfactory assessment. Oversight bodies may also be

charged with examining the legal quality of draft laws (most often performed by a dedicated legal service or a ministry).

13. Second, the 2012 Recommendation highlights that the oversight bodies should play a role in examining the potential for regulation to become more effective. Renda and Castro (2015) describe methods which can support this objective including: participating in the advocacy process by identifying areas in which regulatory reform would be needed; gathering opinions from stakeholders on areas in which regulatory costs are excessive; drafting studies on the stock and/or flow of regulation; and providing reviews of existing regulation.

14. Third, the 2012 Recommendation notes that oversight bodies should contribute to the systematic improvement of regulatory policy. Renda and Castro (2015) identify a number of functions that can support this aim, including: reporting (e.g. publishing yearly reports on oversight activities); institutional relations (e.g. reporting to parliament on oversight activities and co-operating with other oversight bodies at the international level and within international fora such as the OECD or APEC for instance); and co-ordination (e.g. co-ordinating between oversight bodies located in different parts of government).

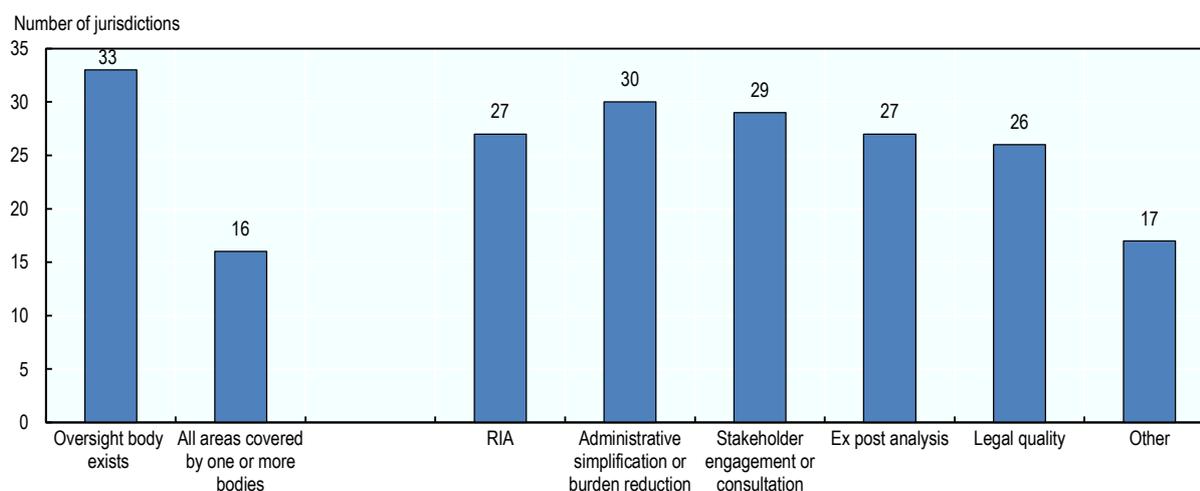
15. Fourth, oversight bodies should also be tasked with co-ordinating *ex post* evaluation for policy revision and for refinement of *ex ante* methods, encouraging the smooth adoption of the different regulatory tools at every stage of the policy cycle.

16. Finally, the 2012 Recommendation states that the oversight body should provide training and guidance on impact assessment and strategies for improving regulatory performance. According to Renda and Castro (2015), oversight bodies may also act as “consultancies bodies”, providing assistance to ministries at an early stage of drafting the preliminary and extended impact assessment forms and intervening on early drafts by suggesting more in-depth assessment of competitiveness, proportionality, reduction of administrative burdens requirements etc.

Evidence on the functions of oversight bodies

17. The Outlook shows substantial variety across countries in relation to the oversight responsibilities of the oversight bodies. They range from Regulatory Impact Assessment (RIA), administrative simplification, stakeholder engagement, *ex post* analysis, legal quality and a category entitled “other” that includes tasks such as co-ordination across the government, or verifying compliance with legal requirements of the country, or driving strategy and planning in regulatory policy (Figure 4). None of these categories stand out as prominent. The various bodies also show substantial heterogeneity in the depth and range of their responsibilities (Table 2). Four bodies enjoy responsibilities for all categories. 35 bodies are limited to one regulatory oversight activity. For bodies with only a single responsibility, oversight of legal quality is the most common responsibility cited (12 bodies have legal quality as sole responsibility).

Figure 4. Areas of responsibility of oversight bodies



Note: Based on data from 34 countries and the European Commission.

Source: OECD (2015b), *OECD Regulatory Policy Outlook 2015*, <http://www.oecd.org/gov/regulatory-policy/indicators-regulatory-policy-and-governance.htm>.

Table 2. The responsibilities of oversight bodies

Number of responsibilities	Number of oversight bodies
5	4
4	20
3	16
2	19
1	35

Note: The categories of responsibilities include RIA, stakeholder engagement/consultation, administrative simplification or burden reduction, ex post analysis, and legal quality.

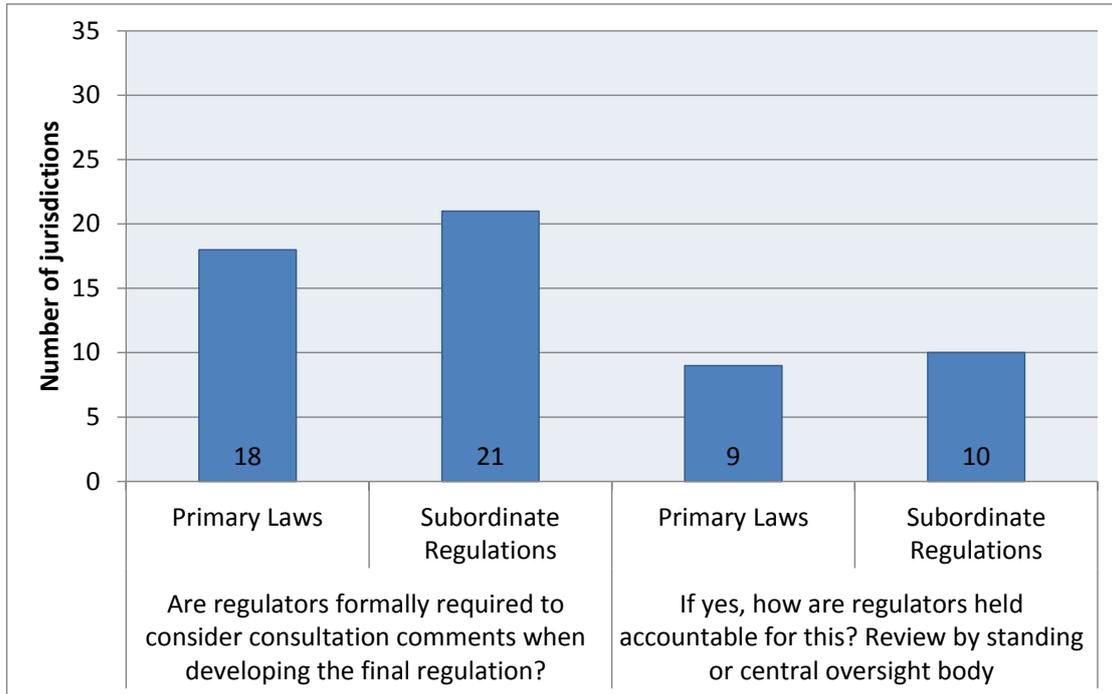
Source: OECD (2015b), *OECD Regulatory Policy Outlook 2015*, <http://www.oecd.org/gov/regulatory-policy/indicators-regulatory-policy-and-governance.htm>.

18. There is some evidence on the involvement of regulatory oversight bodies in quality control, the systematic improvement of regulatory policy and the identification of policy areas where regulation can be made more effective. Some bodies may be able to challenge inadequate evaluations, or signal to government or the public when a regulatory obligation has not been fulfilled. In addition, about half of the OECD membership reports to have a standing body in place that helps to identify areas of policy where regulation can be made more effective by conducting reviews of existing regulation. Finally, the OECD has also collected some evidence on the role of supreme audit institutions in evaluating and improving regulatory policy.

Quality control

19. Results from the [2015 Indicators of Regulatory Policy and Governance](#) show that oversight bodies are responsible for scrutinising the quality of stakeholder engagement, RIA and ex post evaluations in a number of OECD countries. Out of the 20 OECD countries that formally require regulators to consider consultation comments when developing final regulation, 10 jurisdictions report reviews by a standing or central oversight body as the method for ensuring that regulators are held accountable for considering consultation comments (Figure 5).

Figure 5. Consideration and response to consultation comments

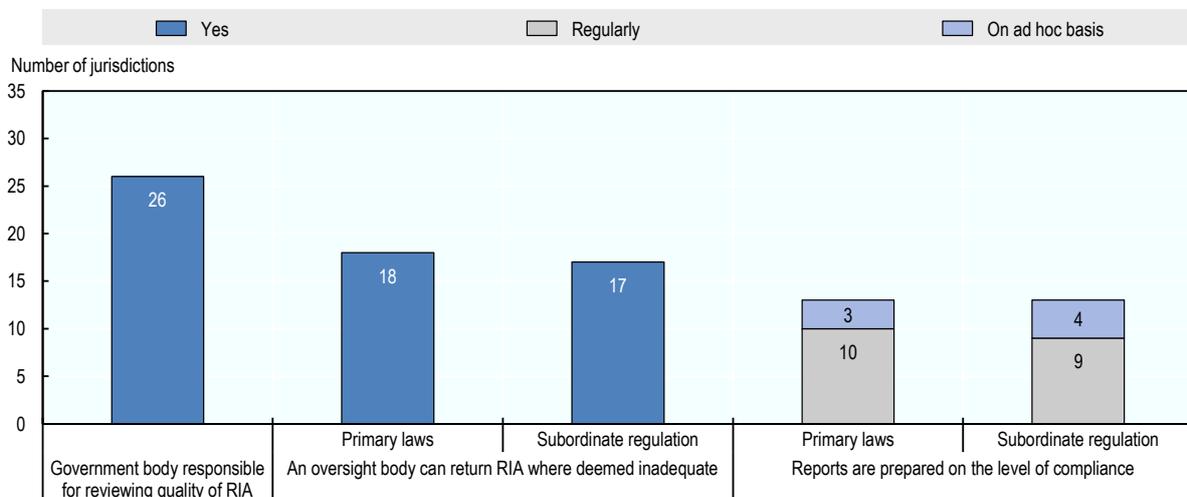


Note: Based on data from 34 countries and the European Commission.

Source: OECD (2015), *OECD Indicators of Regulatory Policy and Governance (iREG)*, <http://www.oecd.org/gov/regulatory-policy/indicators-regulatory-policy-and-governance.htm>.

20. 26 countries report to have a government body outside the ministry sponsoring the regulation responsible for reviewing the quality of RIA. However, not all of these bodies have the capacity to return RIAs when the oversight bodies deem them to be inadequate (Figure 6). This places a question mark as to the effectiveness of these RIA systems in warranting that the implemented regulations are “fit-for-purpose”.

Figure 6. Oversight of RIA

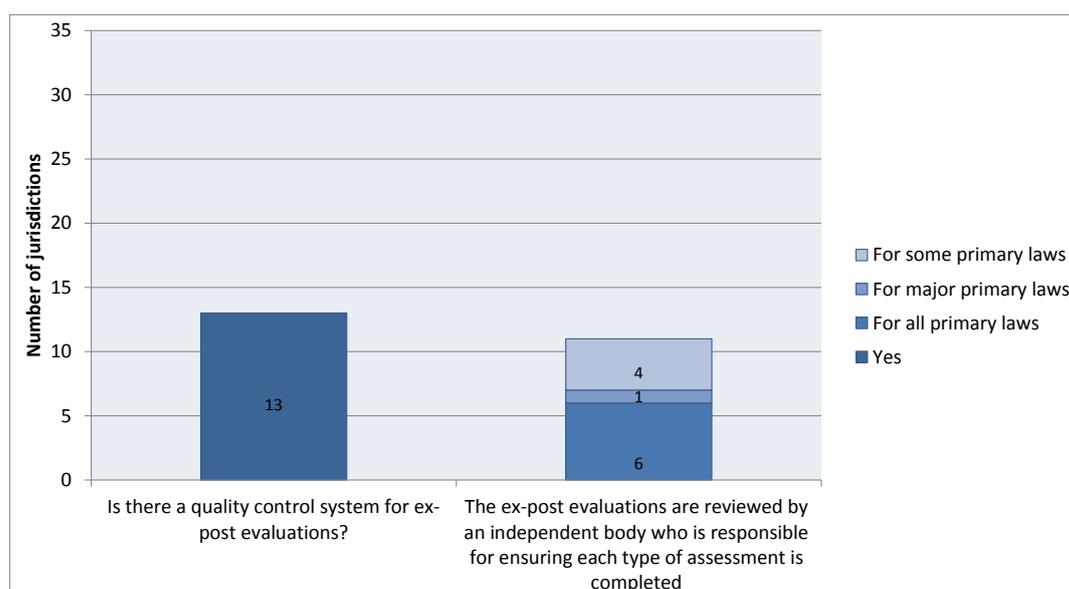


Note: Based on data from 34 countries and the European Commission.

Source: OECD (2015b), *OECD Regulatory Policy Outlook 2015*, <http://www.oecd.org/gov/regulatory-policy/indicators-regulatory-policy-and-governance.htm>.

21. 13 countries report to have a quality control system for ex post evaluations in place. In 11 countries, independent bodies conduct reviews of ex post evaluations to ensure that all required types of assessments are completed, although such reviews are conducted for all primary laws only in 6 countries (Figure 7).

Figure 7. **Quality control of ex post evaluation**



Note: Based on data from 34 countries and the European Commission.

Source: OECD (2015), *OECD Indicators of Regulatory Policy and Governance (iREG)*, <http://www.oecd.org/gov/regulatory-policy/indicators-regulatory-policy-and-governance.htm>.

Identifying areas of policy where regulation can be made more effective

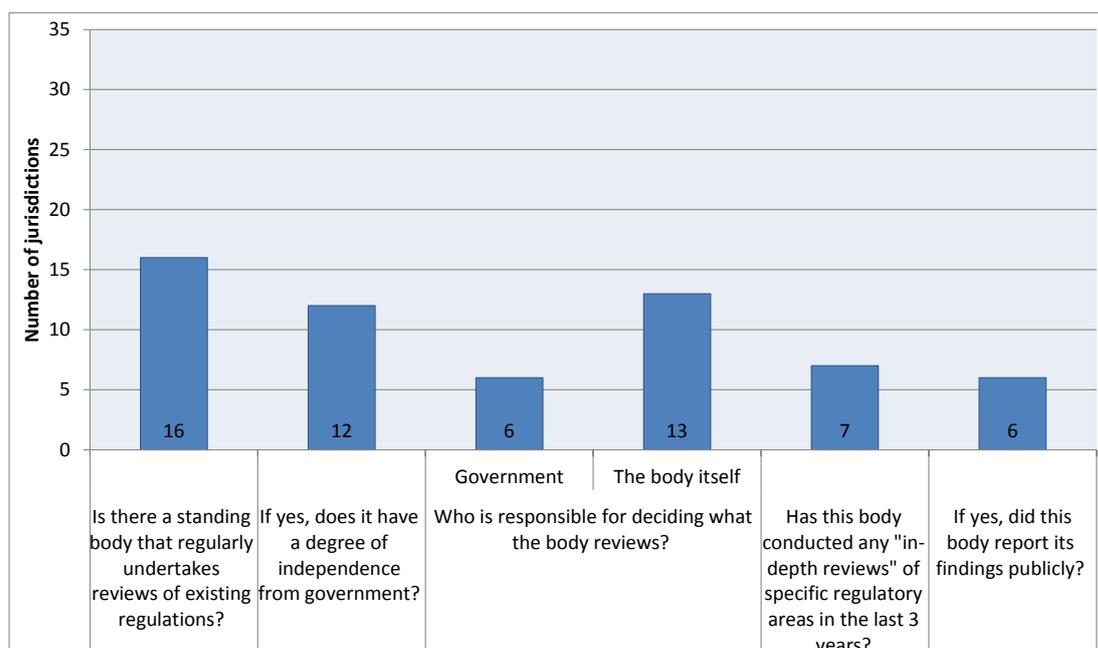
22. 16 OECD countries report to have a standing body that regularly undertakes reviews of existing regulation. About two thirds of these bodies are independent and located outside of government. 2 countries report to have standing bodies for ex post evaluation in parliament, and 6 countries report standing bodies within government, e.g. at the centre of government or a line ministry. The standing body is reported to have a degree of independence from government in 12 countries. In most cases, the body itself decides on the content of its reviews. In 3 countries, the government is co-responsible for deciding what the body reviews, and in another 3 three countries, the government has the exclusive responsibility for this decision. Most of these bodies are reported to be permanent entities that can review both primary laws and subordinate regulations. “In-depth” reviews³ which frequently inform large scale regulatory reforms have been carried out by standing bodies in seven countries in the past three years (as of December

³ According to the 2015 OECD Indicators of Regulatory Policy and Governance, in-depth reviews are defined as comprehensive reviews focusing on the nature and extent of regulation in specific industries, policy areas or sectors and its effects. While efforts to assess costs of regulation, e.g. administrative burdens or compliance costs, may trigger in-depth reviews, these do not in themselves constitute an in-depth review.

2014). (Figure 8). For example, the New Zealand Productivity Commission has carried out a review of New Zealand’s social services in 2015 and is currently reviewing the urban planning system⁴.

23. In addition, OECD (2015c) reports that seven out of ten supreme audit institutions reported in an OECD survey to have looked at the performance of regulation in achieving its objectives. For example, the French Cour des Comptes reviewed labour market regulation aiming to help maintain the employment of people in precarious work situations due to the economic downturn.

Figure 8. **Standing bodies for ex post evaluation**



Note: Based on data from 34 countries and the European Commission.

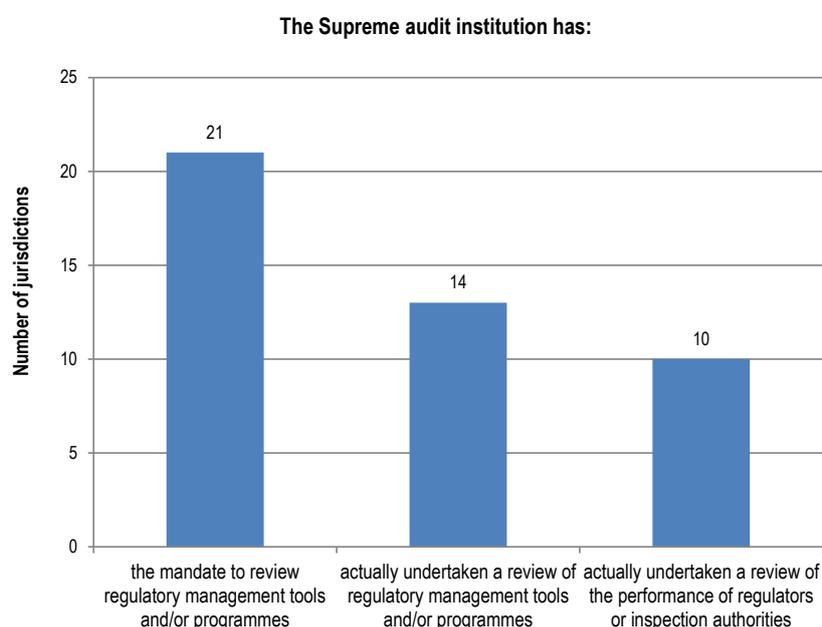
Source: OECD (2015), *OECD Indicators of Regulatory Policy and Governance (iREG)*, <http://www.oecd.org/gov/regulatory-policy/indicators-regulatory-policy-and-governance.htm>

Systematic improvement of regulatory policy

24. Evidence from the [OECD Framework for Regulatory Policy Evaluation](#) (OECD, 2014) suggests that supreme audit institutions play a role in reviewing regulatory management tools and programmes in a number of OECD countries in order to improve regulatory policy. As illustrated in Figure 9, more than half of all OECD countries (21) report that their supreme national audit institution has the mandate to review regulatory management tools or programmes. However, only 14 countries report that their supreme audit institution has actually undertaken a review of regulatory management tools or programmes. Ten OECD countries report that their supreme audit institution has undertaken a review of the performance of regulators or inspection authorities.

⁴ For details, please see <http://www.productivity.govt.nz/>.

Figure 9. **Mandate and activities of supreme audit institutions**



Source: OECD 2014

25. Most reviews focus on the functioning of RIA (Estonia, EU, Finland, Germany, the Netherlands, Slovenia). Only Austria, Denmark and Sweden report that their supreme audit institution has reviewed simplification and burden reduction programmes. Finland is the only country to report a review of legislative drafting by their supreme audit institution; and Switzerland is the only country reporting a review of the use of evaluation clauses in legislation. No country reported that the supreme audit institution has conducted a separate evaluation of consultation practices. However, several supreme audit institutions reviewed parts of consultation within their assessment of RIA. For example the European Court of Auditors assesses at what stage of RIA consultation takes place and whether minimum periods are respected. The Slovenian audit office has evaluated RIA in 2006 and 2011. In its report it assesses the user-friendliness of the online portal “E-demokracija” where citizens can submit opinions on legislative proposals and examines whether time limits are respected. Only the UK reports that its National Audit Office has undertaken a comprehensive review of its work on regulatory reform in 2011 examining regulatory management across central government, the impact of regulations on business and how regulations are designed and implemented (ibd.).

26. Ten countries report that their supreme audit institution carries out performance audits of regulators or inspection authorities (Australia, Estonia, EU, Finland, Germany, Mexico, New Zealand, Slovenia, Sweden, United Kingdom). Only Australia explicitly mentions undertaking reviews of both regulators and inspection authorities. Mostly independent economic regulators are reviewed, but also independent bodies focusing on standard setting (ibd.).

27. A recent OECD study on supreme audit institutions also finds evidence that these institutions engage in the review of regulatory policy: 5 out of 10 supreme audit institutions surveyed report to have looked at the effective and efficient application of regulatory policy tools in the past, such as RIA and ex post reviews of regulations. All ten audit institutions surveyed reported to have looked at processes for the development of regulations and regulatory policy, including the clarity of objectives of regulatory policy frameworks, the incorporation of risk management, the openness of the process and the alignment of regulatory policy with international principles. The study also cites examples of supreme audit institutions

looking at the tools for implementing regulatory reform, e.g. in the areas of education health and tourism by the Korean supreme audit institution, or a report by the Auditor General of Canada evaluating Canada's regulation and monitoring procedures in the area of pharmaceutical drugs (OECD, 2015c).

CONCLUSION AND ISSUES FOR DISCUSSION

28. Whilst there are no blueprints for institutional settings, it is crucial that the roles of different institutional actors, and in particular of oversight bodies, are clearly specified in order to achieve coherent implementation of regulatory practices. Likewise, institutional frameworks and co-ordination mechanisms for regulatory policy need to be adequately designed and equipped with the resources to help link regulatory policy to the political decision-making process and hence contribute to improved regulatory outcomes.

29. Existing empirical evidence on the institutional setting and functions of oversight bodies for regulatory policy is still very fragmented. A systematic collection of evidence on the existing institutional frameworks for regulatory policy, the roles different institutions take in the regulatory process and which characteristics and powers they have could shed light on how to best design institutional frameworks to achieve adequate regulatory outcomes.

30. Evidence shows that supreme audit institutions play a role as an oversight body for regulatory policy. There is also room for other institutions to contribute to regulatory policy, such as parliaments, regulatory agencies, sub-national and international levels of government, as well as independent research and advisory bodies (OECD, 2015b). Similarly, it is worth exploring the merits and challenges of an integrated approach to evidence-based policy making, e.g. by co-ordinating the evaluation of different policy tools, such as the evaluation of regulatory practices, spending reviews and programme evaluations.

31. Based on existing evidence and research findings, the following questions would require further consideration by participants in the 8th OECD Conference on Measuring Regulatory Performance:

- What are the lessons learned from OECD countries' experience regarding the institutional setup for regulatory policy that can help countries ensure that regulatory policy tools work efficiently and effectively?
 - Which institutional settings exist for conducting and overseeing regulatory policy, including number and location of oversight bodies? Which institutional setup works in which context?
 - What are the merits and challenges of having independent oversight bodies? How can their political impact be ensured while at the same time guaranteeing independence in the performance of their technical functions?
 - Are independent evaluation bodies and evaluation units in ministries necessary to ensure quality evidence?
- Which institutional capacities are needed to link regulatory policy to the political decision-making process and realise greater impact?
 - Which functions and powers should regulatory oversight bodies have to enhance the quality of regulation and reach the desired policy outcomes?
 - What are countries' experiences with joint/separated responsibilities for oversight of different regulatory policy tools?
 - How can institutions ensure that timely, relevant and accurate data is available to feed into evidence-based policy?

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