



Measuring Regulatory Quality

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Introduction

Rules are essential for economic growth, social welfare and environmental protection. But rules can also be costly in both economic and social terms. Governments may for example want to ensure public money is well-spent by allocating rent allowances only to those in need – but what if the system for determining eligibility is costlier than offering the allowance to everyone, or has the perverse effect of reducing the supply of housing? What business will be keen to invest and expand in a region or country if the paperwork involved eats up the first six months' profit?

The answer is not to give up on rules, but rather to develop a more efficient and less costly regulatory system. Regulatory management systems can help governments prepare better new rules and improve existing rules. Indeed, improving regulatory management and regulatory reform are among the best ways that governments can promote economic development, investment and trade, but it requires a continuous process.

Through a series of surveys, the OECD has developed Indicators of Regulatory Management Systems to analyse the regulatory practices of OECD countries over time. This helps identify management strategies that work, and can help in designing and building a framework to ensure good-quality national regulations. These indicators offer broad insights on trends in regulatory reform over recent years and can help countries craft and revise their regulatory systems to make them more efficient and cost-effective.

Regulations need to be part of a system that works, one that strives to eliminate individual rules that contradict or duplicate each other. Making regulatory systems more efficient is complex and widespread – it can include cutting red tape for business, making policy more evidence-based, promoting the functioning of markets and improving the public's understanding of the law. But governments can learn a lot about what has worked – and what has not – in other OECD countries. This *Policy Brief* offers a snapshot of some key results, with some examples. ■

How is regulatory quality measured?

The quality of a country's regulatory system depends to a great extent on how regulations are conceived and made. Governments are concerned to ensure that their regulations operate efficiently to boost economic growth, social welfare and environmental standards.

The OECD first published Policy Recommendations for Regulatory Reform in 1997. These principles have been revised drawing on the lessons learnt over a decade, including a review of over 23 OECD countries' regulatory management practices, as governments have had to pursue their efforts to cut red tape while shaping appropriate market conditions that meet the public interest.

The Indicators of Regulatory Management Systems offer detailed information on countries' practices in relation to the following *Guiding Principles for Regulatory Quality and Performance* developed by the OECD in 2005:

1. Adopt at the political level broad programmes of regulatory reform that establish clear objectives and frameworks for implementation.
2. Assess impacts and review regulations systematically to ensure that they meet their intended objectives efficiently and effectively in a changing and complex economic and social environment.
3. Ensure that regulations, regulatory institutions charged with implementation, and regulatory processes are transparent and non-discriminatory.
4. Review and strengthen where necessary the scope, effectiveness and enforcement of competition policy.
5. Design economic regulations in all sectors to stimulate competition and efficiency, and eliminate them except where clear evidence demonstrates that they are the best way to serve broad public interests.
6. Eliminate unnecessary regulatory barriers to trade and investment through continued liberalisation and enhance the consideration and better integration of market openness throughout the regulatory process, thus strengthening economic efficiency and competitiveness.
7. Identify important linkages with other policy objectives and develop policies to achieve those objectives in ways that support reform.

But Principles are not very helpful unless they are actually applied. The Indicators of Regulatory Management Systems in OECD countries measure whether countries' regulatory systems meet the quality standards that reflect best practices. These indicators do not provide specific information about the effectiveness of individual regulations, but they can help to analyse regulatory governance systems as a whole, to diagnose key success factors and to identify priority areas for further reform.

Directly assessing the quality of a given regulation within a country is a challenging task that requires significant analytical work, and attempting to examine the quality of the entire stock of regulation and make comparisons among countries is significantly more complex. Therefore the Indicators of Regulatory Quality Management Systems focus on regulatory management practices; that is, on how new rules are being prepared and how old rules are being reformed. The framework that the OECD uses to analyse these systems looks at the policies, tools and institutions that make up the regulatory management system. Through a survey of country practices the indicators measure the interaction of these three elements over time to report on the quality of a regulatory management system. ■

How important is political support for reform?

Regulatory reform and management strategies require political support if they are to succeed. Every country with an organised and long-standing programme of regulatory reform has found it necessary to establish an explicit policy statement on reform at the highest levels of government, both to communicate the reasons for reform and to build support for change. Regulatory policy must focus on two dimensions of regulatory activity: the appraisal of new regulation to ensure the quality of “the flow” of new regulations and the reform of existing old regulations, “the stock”.

While different approaches reflecting varying constitutional, administrative and political environments exist, the main elements of regulatory management are fairly constant. An effective regulatory policy has three basic, mutually reinforcing components: it should be adopted at the highest political levels; contain explicit and measurable regulatory quality standards and provide for a continuing regulatory management capacity. The extent to which regulatory policies focus on reforming the regulatory framework tends to wax and wane in most countries, but there has been a progressive expansion in the scope of the policies. Regulatory policy programmes typically begin with a focus on one or a few reform objectives and broaden their focus as the experience accumulates and concerns grow over the economic costs of avoiding reform. For many countries with relatively long histories of reform activities, the broadest possible objective, that of enhancing net social welfare, is increasingly acknowledged as the basis for reform. Not surprisingly, countries with explicit regulatory policies make more rapid and sustained progress than countries without clear policies.

In 2005, 26 of the 30 OECD countries had an explicit published policy promoting regulatory reform. A total of 21 countries had published policies expressing explicit principles of good regulation and 19 countries had established accountability for reform at ministerial level. The fact that regulatory policy is still a diffuse responsibility in some countries shows that the scope for political leadership can be improved. ■

Why do institutions matter?

Institutional capacity is also a key to improving the quality of new and existing rules. The successful design and implementation of regulatory instruments depend on the right set of institutions to maintain consistency and a systematic approach across the entire administration to advocate regulatory quality. A range of specific institutions are serving such purposes. They include regulatory oversight bodies, which are often located in core government offices with a mandate to check the quality of the new proposed rules as well as to develop programmes for cutting red tape. Independent regulatory authorities have also contributed to improving regulatory decision-making in specific sectors.

Many OECD countries have established or strengthened their regulatory oversight bodies in recent years, as a visible sign of the integration of regulatory reform into government management systems. While in 1998 only 18 countries had a dedicated body responsible for promoting regulatory policy, by 2005, 24 countries had established such a body, generally with broad responsibilities for analysing the impact of regulations. The majority of countries located their regulatory oversight body at the centre of government with some form of interdepartmental co-ordination.

In addition to bodies responsible for managing regulatory reform, in 2005 around a third of OECD countries had established standing advisory bodies, within or independent of the administration, that receive references to review

broad areas of regulation. This type of body has the advantage of bringing an independent view with regulatory policy expertise and can help as a policy driver supporting the reform process through advocacy and public hearings. ■

What tools can assist in preparing better rules?

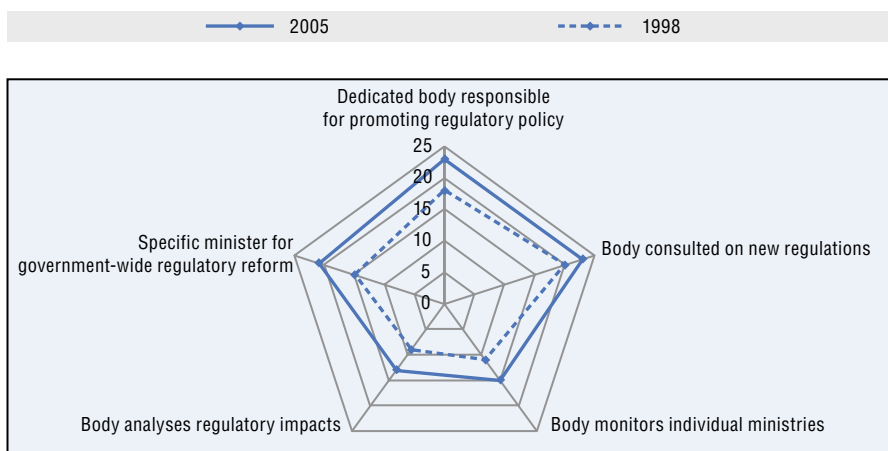
Systematic quality assurance requires the use of a range of tools in a consistent and mutually reinforcing manner. The essential tools for improved regulatory decision-making are: regulatory impact analysis, public consultation, consideration of regulatory alternatives and compliance burden-reduction measures. The Indicators of Regulatory Quality Management Systems examine country practices with the implementation of these tools.

Consultation with businesses and the public is integral to improving the quality of regulation. Proposals that are informed by public consultation are therefore more likely to be efficient and effective and less prone to the risk of regulatory failure. Transparency also encourages trust and promotes compliance with regulations. Consultation is also important to assessing the potential impact of a regulation. It is necessary therefore that consultation processes are built in at key stages of the regulatory process and that the outcome of consultations can influence the final regulation.

For consultation to be effective, information about the regulatory proposals must reach the relevant groups and adequate time must be allowed for the public to consider and respond to regulatory proposals. There are no hard fixed rules about how consultation should be undertaken or the time period which should be allowed for responses. A longer period should be permitted where regulatory proposals are complex, and consultation methods should identify and target interested groups to increase the likelihood of consultation being effective.

The Indicators suggest that consultation on new regulation has become routine practice among OECD countries, but methods have changed since 1998. This may be because governments are developing new, more effective ways of consulting with stakeholders. There is, for example, considerable variability in the number of days that countries routinely permit for consultation on a new regulatory proposal. While a longer period obviously allows more time for comments, there are diminishing returns to protracted consultation periods. In general a minimum ninety day period of consultation

Figure 1.
TRENDS IN INSTITUTIONAL SETTING TO PROMOTE REGULATORY POLICY ACROSS OECD COUNTRIES (Number of countries)



with stakeholders external to government appears to represent good practice. Clearly, there is no ideal period for all proposals and a case by case approach is often warranted.

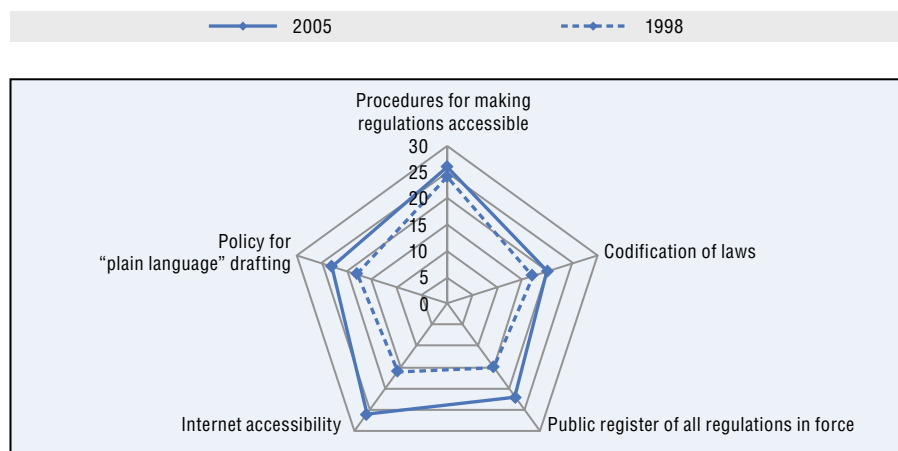
Communicating with and providing information to persons affected by regulation is an essential component of regulatory fairness and for promoting effective compliance. The use by OECD countries of transparent processes to achieve this increased between 1998 and 2005, with the most significant change being making all laws publicly available over the Internet. This is a practice used by all of the countries which reported having procedures for making regulations known and accessible. Making laws simple and easy to understand is important to compliance. In 2005 more than two thirds of OECD countries had a general policy requiring plain language drafting of laws and provided general guidance to their law drafters on how it should be done. ■

When are alternatives to regulation useful?

Sometimes government may need to think of alternative approaches, avoiding implementing new and costly regulation, as other policy instruments may help to achieve policy objectives. The use of different instruments tends to be based more on habit and institutional culture than a rational analysis of the suitability of different tools to address identified policy problems. Innovative policy-making often involves combining traditional approaches to regulation based on order and command with other instruments, rather than replacing traditional regulation entirely. There are substantial benefits from a systematic assessment of policy instruments. Alternatives to regulation include a number of features such as:

- more flexible, less prescriptive forms of regulation, such as performance-based regulation,
- co-regulation and self-regulation, involving the industry, profession or regulated entities,
- incentives and market-based instruments, including taxes and subsidies, tradable permits and other market-based approaches, often found in the environmental area, and;
- information approaches, focusing on education and persuasion.

Figure 2.
RECENT TRENDS ACROSS OECD COUNTRIES IN THE COMMUNICATION OF REGULATIONS (Number of countries)



The Indicators suggest that the explicit examination of regulatory alternatives is increasing at a substantial pace, but the extent of their use remains low. In 2005, 18 countries had a systematic requirement that the use of alternatives to regulation be considered in all cases, while 8 countries and the European Union required it in only some cases. Four countries reported no requirement for the consideration of alternatives at all. In 2005, only half of the OECD countries had developed guidance material to assist in the evaluation of suitable alternative approaches. ■

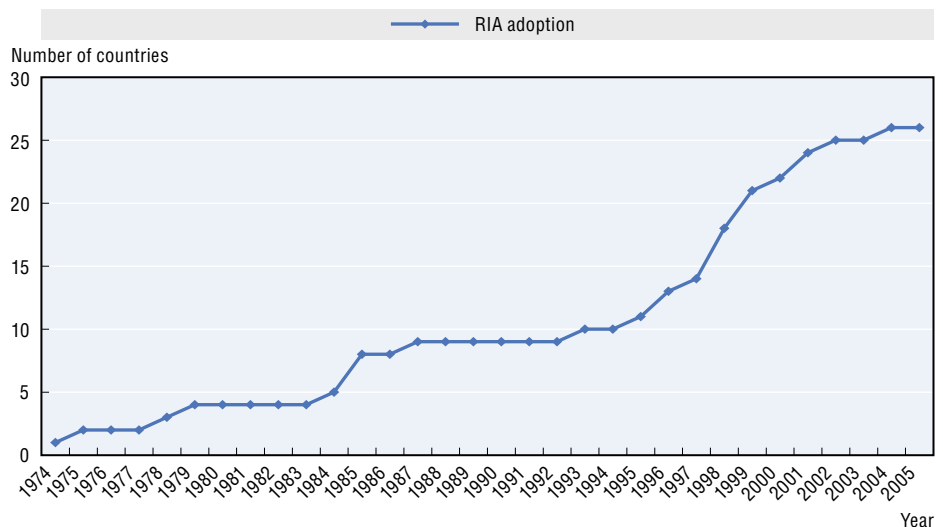
What is the role of Regulatory Impact Analysis?

Regulatory Impact Analysis (RIA) is a way of assessing the positive and negative effects of a regulation. It is evidence-based, drawing on consultation with affected groups and assessing economic, social and environmental impacts. RIA underpins the capacity of governments to ensure that regulations are efficient and effective in a changing and complex world. The use of RIA has developed quickly among OECD countries. Although only two or three countries were using RIA in 1980, by 1996, more than half of OECD countries had adopted RIA programmes. By the end of 2000, 14 out of 28 OECD countries had adopted universal RIA programmes. The latest survey of Indicators of Regulatory Management Systems of OECD Countries reveals that in 2005 all member countries routinely carried out some form of RIA on new regulations before finalising and implementing them. In the past RIA has mostly been used in relation to lower level rules but is now increasingly being applied to primary legislation. ■

How does cutting red tape help business and social welfare?

It costs businesses time and money to fill out forms, and gather and report information required by government regulations. The amount of red tape involved in setting up a business or shipping a load of goods may lead businesses to give up and go elsewhere. So cutting red tape through administrative simplification is important in reducing the regulatory burden and improving the quality of regulations. Efforts in this area are directed at removing unnecessary paperwork, reducing delays and streamlining application and licensing processes. Administrative simplification programmes reduce the costs of compliance across government, thereby

Figure 3.
TRENDS IN THE ADOPTION OF REGULATORY IMPACT ANALYSIS ACROSS OECD COUNTRIES



removing impediments to innovation and productivity and facilitating entrepreneurship and business activity. Cutting red tape not only helps business it simplifies the interactions of government and its citizens.

In 2005, 25 countries had an explicit programme to reduce administrative burdens compared to 20 in 1998. Measuring results is becoming a key feature of efforts to cut red tape, with a growing number of countries using the *Standard Cost Model (SCM)*. Originally initiated in the Netherlands, the SCM is an accounting method that is being widely adopted within and outside Europe. It involves calculating how much it costs a typically efficient business to comply with government administrative procedures and to provide information required by government. An aggregate cost can then be calculated in money terms across the entire business sector in the economy. These aggregate numbers offer an indication of the pure administrative cost of regulations. They are also used as a starting point to set a quantitative target for cutting red tape. Reductions in the regulatory burden are achieved by streamlining and removing requirements to provide information, and by using ICT and electronic recording and reporting requirements. ■

Where do we go from here?

There are significant challenges to measuring the benefits from the institutional development of countries' regulatory management systems through empirical data and statistical analysis. The links between outcomes in countries, in the form of increased productivity or stronger entrepreneurship, and the regulatory policies, tools and institutions that facilitate these outcomes are indirect. The collection of survey data can be a significant complement to a detailed and qualitative analytical approach as well as provide useful aggregated information about common practices. These may deserve further detailed work at the country level or more technical statistical or econometric analyses. As a first step, the Indicators of Regulatory Management Systems provide useful insights to assess the impact and interaction of regulatory quality tools, institutions and policies. As further data are collected over time, it will be increasingly useful to assist governments to evaluate the performance and design of regulatory reform programmes and the contribution that these programmes can make to improve the welfare of societies. Future analysis should reveal new insights into the effectiveness of new tools, such as practices for risk assessment and models for compliance cost reduction.

For today the broad results show that there is an increasing consensus about good regulatory practices that has rapidly developed across OECD countries, partly in relation to the OECD work. The question today is not whether regulatory quality tools are needed, but about which ones are more effective, and how to design, implement and evaluate them. ■

For further information

For more information about the OECD's work on Indicators of Regulatory Management Systems, please contact:
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For further reading

OECD (2007), **Cutting Red Tape: Comparing Administrative Burdens across Countries**, ISBN 978-92-64-00821-2, 177 p, € 50.

More information on indicators of regulatory quality frameworks in OECD countries is available in the published analysis of the survey results. This has been released in two working papers:

OECD Jacobzone, Stéphane, Chang-Won Choi, and Claire Miguet (2007), **"Indicators of Regulatory Management Systems"**, OECD Working Papers on Public Governance, No. 4, Paris.

OECD (2007), Jacobzone, Stéphane, Gregory Bounds, Chang-Won Choi, and Claire Miguet, **"Regulatory Management Systems across OECD countries: Indicators of Recent Achievements and Challenges"** Paris, OECD Working Papers on Public Governance, No. 9, Paris.

The working papers and further information may be obtained from the website www.oecd.org/regreform.

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The OECD Policy Briefs are prepared by the Public Affairs Division, Public Affairs and Communications Directorate. They are published under the responsibility of the Secretary-General.