



EUROPEAN
COMMISSION



ORGANISATION FOR ECONOMIC
CO-OPERATION AND DEVELOPMENT

**BETTER REGULATION IN EUROPE: AN OECD ASSESSMENT OF REGULATORY
CAPACITY IN THE 15 ORIGINAL MEMBER STATES OF THE EU**

PROJECT QUESTIONNAIRE (1)

For those countries which have been the subject of a Multidisciplinary Regulatory Reform Review by the OECD in the last few years (Denmark, Finland, France, Germany, Greece, Ireland, Italy, Netherlands, Spain, Sweden, United Kingdom)

BETTER REGULATION IN EUROPE: AN OECD ASSESSMENT OF REGULATORY CAPACITY IN THE 15 ORIGINAL MEMBER STATES OF THE EU

Please reply by

BEFORE YOU START

Please answer each question fully but concisely, except where

- you have already prepared/provided this information (in sufficient detail, and it remains up to date) for another recent exercise such as your annual progress reports to the EU Commission on the Lisbon Strategy for Growth and Jobs. If so please send us the material which has been already been provided, or simply “cut and paste” into the reply for this questionnaire.
- you have already provided this information for Chapter 2 on regulatory governance of the OECD’s multidisciplinary review of regulatory reform in your country in 1999 and this remains up to date (If so, please identify this material so that we can use it again).

Include attachments or clear and specific website references to supporting materials (internal documents, guidance notes, data, studies, articles)

Set out the situation as it is now, but also identify any recent changes in the regulatory management framework, as well as expected changes in the near future

Provide the name and contact details (direct telephone and email address) of the official who can provide further information or answer questions, on each section of the questionnaire if necessary

Consult the glossary, attached.

Reply in French or English (but attachments do not need to be translated into French or English)

Regulation: what the term means for this project

The term « regulation » in this project covers any instrument by which governments set requirements on enterprises and citizens. It therefore includes all laws (primary and secondary), formal and informal orders, subordinate rules, administrative formalities and rules issued by non- governmental or self- regulatory bodies to whom governments have delegated regulatory powers. Subordinate regulations may be mandated in the primary laws, or established directly by lower levels of government (state, region etc). For linguistic simplicity, the process of making new regulations is throughout referred to as “rule-making”, and the enforcement of regulations as “rule-enforcement”.

For the first part of the questionnaire, we would like to know how the recommendations regarding regulatory management in Chapter 2 of the OECD's multidisciplinary review of regulatory reform in your country have been taken forward

RECOMMENDATIONS	Was the recommendation implemented PLEASE ANSWER: YES / NO / IN PART	IF YES Please describe the action taken	IF NO Please explain what happened, why no action was taken or whether an alternative approach was adopted	IF IN PART Please describe the extent to which the recommendation was implemented, and why some aspects were not implemented
1.				
2.				
3.				
4.				
5.				
6.				
7.				
8.				

9.				
10.				

- What were the technical factors affecting implementation (for example human resources, inter ministerial co-ordination, legal issues)
- What were the political challenges affecting implementation?
- How could the recommendations have been made more relevant?

For the remainder of the questionnaire, please refer back to your answers for this section, where appropriate.

A. Policy(ies) for Better Regulation

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 at the highest political level 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. It also requires adequate resources and regular monitoring of progress achieved. Measures need to be built in to ensure compliance with regulatory quality processes and tools, including sanctions.

1. Please provide a **brief** overview of major developments in regulatory management over the last few years. To what extent has the promotion of Better Regulation become an explicit objective, beyond traditional regulatory management focused on legal quality?
2. What are the principles and objectives of your country’s Better Regulation policy or policies? When and how were they adopted? How are they linked? Are core policies for Better Regulation included (impact assessment, consultation, simplification, measures to reduce administrative burdens)? Are there targets to be met for the implementation of these policies and if so, in what timescale?¹
3. Please comment on ICT and e-government policies from a strategic perspective if these are especially important support tools for Better Regulation in your country.²
4. What parts of government does the Better Regulation policy(ies) cover (executive, legislature, agencies, sub-national levels)?

B. Institutional framework and capacities for Better Regulation

Regulatory management needs to find its place in a country’s institutional architecture, and capacities for promoting and implementing better regulation need to be built up. The OECD’s country reviews highlight the fact that the institutional context for implanting effective regulatory management is complex and often highly fragmented. Approaches need to be customised, as countries’ institutional settings and legal systems can be very specific, and range 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.

A wide range of institutions with regulatory functions or influence needs to be harnessed to the regulatory management agenda. Many are long established, some are new, and some have a new or developing role. Some are very helpful to regulatory quality, others less so. Can all relevant institutions be encouraged to support the regulatory quality agenda? How can this be achieved? A central oversight body has proved very helpful to many countries. This is not to usurp the role of specific actors, but rather to give the process focus, coherence and momentum. What role should each actor have, taking into account accountability, feasibility, and balance across government?

¹ Please provide a brief strategic overview in this section. Use sections D, E and others to provide more detail on policies such as impact assessment, simplification and administrative burden reduction.

² Please provide a brief strategic overview in this section. Use sections C, E, G and others to provide more detail on specific policies.

Executive centre of government

5. Please explain how the federal/national administration is organized to carry out regulatory management, identifying the key actors, what they do, and how they interact (central regulatory oversight body and/or ministries with an equivalent function, other core ministries or bodies in the regulatory management process such as finance or justice ministries, advisory bodies, key committees or working groups).
6. How has the institutional structure evolved over the last few years?
7. Please provide organigrams where possible.

Legislature (Parliament)

Whilst the executive branch of government is often the first subject of attention for Better Regulation, the legislature is also of critical importance. Its precise role varies according to the constitutional/legal structure of a country, but its influence will in all cases be significant. Parliament may be the prime proposer of new primary legislation, and even where it is not, proposals from the executive rarely if ever become law without integrating the changes generated by parliamentary scrutiny.

8. What is the role of the legislature in Better Regulation (include committees or commissions that have a special interest in Better Regulation or in specific policies such as administrative burden reduction)? To what extent does it take an interest in Better Regulation?

Judiciary

The role of the judiciary and the courts is a growing importance in many countries. The judiciary may have the formal role of constitutional guardian, and even where this is not the case, it is generally responsible for ensuring that the executive acts within its proper authority, and is likely to play a major role in the interpretation and enforcement of regulations, when regulations are appealed.

9. Please describe the general role of the courts in reviewing regulations, and the basis on which courts can overturn regulatory decisions. What changes have there been in recent years? Is training provided to the judiciary on EC law?

Regulatory agencies/inspectorates³

Agencies are increasingly a core part of the institutional framework for rule-making and enforcement, and may generate a significant proportion of the regulations affecting key sectors of the economy and society. They may be directly engaged in the implementation of EC regulations covering their sector at the EU and national levels. It is important to understand more of how they manage this process, and their interaction with parent ministries and other relevant institutions such as local levels of government.

³ Note that the aim is **not** to go into the detail of any specific agency or agencies, but rather, to identify the broad issues relating to agencies' rule-making, inspection and enforcement functions that matter for Better Regulation.

(For answer by the centre of government)

10. How many agencies are currently established? Are more planned? What sectors or activities do they cover? Is there a general policy or framework for their design, functions, and powers of? If so, what are the main features of this framework (agency powers, degree of independence/relationship with the ministry, budget, accountability mechanisms, evaluation of performance etc)? If not, how are their mandates established, and far do they differ in their mandates? Where EU level agencies exist for the same issues, what is the relationship with national agencies?

11. To what extent are agencies involved in the development and implementation of EC regulations? Is there any co-ordination with the national level over the development of national/EC regulations, to assess the implications for their work of developing secondary regulations or enforcement?

12. What is the system of appeals (administrative, judicial) for agency regulations and the decisions flowing from them? Is there a different process for different agencies, or are agencies all covered by one system? What decisions are covered? Are court decisions restricted to procedural issues, or can they rule on issues of substance? What is the average delay for court decisions?

13. Do agencies set their own Better Regulation policies? To what extent do they share a Better Regulation agenda with the centre? Is regulatory quality an explicit part of any mechanism to evaluate the performance of agencies?

14. If the Better Regulation agenda is shared, what guidelines or requirements (such as impact assessment, consultation, simplification, administrative burden reduction) does the centre lay down for them to follow? Is there consultation between the centre and the agencies over this framework? How is the policy monitored and enforced?

15. If the Better Regulation agenda is determined by agencies directly, can you make any general assessment of the degree to which they apply Better Regulation policies?

(For answer by agencies who set their own Better Regulation agenda)

16. What policy or policies do you have for Better Regulation (for example impact assessment, consultation, simplification, measures to reduce administrative burdens such as streamlining licences, use of alternatives to regulation)?

17. Has the policy been communicated and if so to whom? How do you consult with key stakeholders (business, citizens, consumer groups)?

18. To what extent are you involved in the EU's regulatory development process?

(For answer by agencies who share a Better Regulation agenda with the centre)

19. What are the issues and challenges involved in implementing national regulatory policy? Is the quality or appropriateness of the primary legislation an issue? Is there excessive regulation coming from above?

20. How do you consult with key stakeholders (business, citizens, consumer groups)?

21. To what extent are you involved in the EU's regulatory development process?

Sub-national levels of government

A significant part of regulatory activity is generated by local levels of government. Better Regulation policies, tools and processes are needed at these levels too, otherwise the overall goal of Better Regulation cannot be adequately met.

22. Please set out the basic structure of sub-national levels of government for your country.
23. Does the Constitution or any other instrument (s) define and allocate responsibilities for rule-making among the different levels of government? Is there a legal or other framework for adjudication in case of conflict? To what extent do rule-making responsibilities overlap?
24. Please describe the main responsibilities and powers of sub-national levels of government (distinguishing between the different levels if relevant). In which areas do they have their own rule-making powers? In which areas do they have powers of implementation/supervision/enforcement for regulations that are set elsewhere? In which areas are they responsible for service delivery (such as waste management, local health care)? What is their role with regard to licences/permits and planning?

Resources and training

Investment in resources and training for regulatory management is essential. Continuous training and capacity building within government, supported by adequate financial resources, contributes to the effective application of tools for Better Regulation. Beyond the technical need for training in certain techniques such as impact assessment or plain drafting, training communicates the message to administrators that this is an important issue, recognized 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 on reform initiatives, and enhances co-ordination and regulatory coherence. These are also key elements to ensure a whole-of-government perspective.

25. Can you give an estimate of how many officials are directly/ indirectly involved in Better Regulation co-ordination and management, and as a proportion of the total number of officials in the public service? Please disaggregate if appropriate between national/federal and regional/local levels of the administration.
26. What training is in place for those involved in the development of regulations (such as consultation, conduct of impact assessment, alternatives to regulation, risk management)? Who is covered? What supporting written materials are available? Can you estimate the number of officials who are given regulatory training (for example annually)?

C. Transparency, consultation and communication

The way in which countries secure transparency in the regulatory environment is a fundamental cross-cutting issue for this project. Transparency is one of the central pillars of effective regulation, 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 processes for making and changing regulations, consultation with stakeholders, effective communication of regulations and plain language drafting, publication and codification to make them accessible, controls on administrative discretion, and effective implementation and appeals processes. It can involve a mix of formal and informal processes.

The political economy of reform is of growing interest. How can ongoing support be secured for regulatory quality work? One issue relates to stakeholders' perceptions of regulatory achievements and how progress can be more effectively communicated. For example the perception of regulatory burdens by stakeholders may not match the reality (business may continue to complain about regulatory issues that are better managed than previously).

This section will use information from other sections in order to provide a strategic perspective on these issues.

Public consultation

- 27. What provisions exist for public consultation on rule-making? Are there explicit and mandatory requirements? Do they cover all regulations? Is a distinction made between early informal consultations and formal consultations? Do you have explicit guidelines on consultation? Who is consulted? At what stage of the rule-making process is the public informed? How much information does the government disclose? What information are those consulted asked to provide? How long do they have to reply?
- 28. What use is made of ICT?
- 29. Is the consultation process linked to impact assessment procedures ?
- 30. Does the government report on the results of consultation, are stakeholders provided with feedback and explanations?

Public communication

- 31. Are regulatory requirements communicated systematically to affected parties? Please describe requirements for publishing and otherwise making regulation accessible to affected groups (distinguishing between primary and secondary regulations), as well as any “plain language” drafting requirements. Have central registries of regulations and associated formalities been set up? What use is made of ICT?
- 32. Do you communicate on developments and results for key Better Regulation policies such as ex ante impact assessment, simplification, administrative burden reduction? To whom do you communicate (for example to those inside government, to stakeholders outside government such as business and citizens)?

D. Tools and processes: the development of new regulations (flow)

Procedures for making new regulations: forward planning, administrative requirements, legal quality

Predictable and systematic procedures for making regulations improve the transparency of the regulatory system and the quality of decisions. Many countries use administrative procedure laws and rules to establish mandatory procedures in rule-making. These cover issues such as requirements for transparency and consultation (within or outside government), publication, scrutiny by legislatures, and due process for appeals.

Forward planning is a helpful tool for improving transparency and co-ordination in rule-making. Some countries periodically assemble lists and descriptions of forthcoming laws and subordinate regulations. These may be internal documents aimed at enhancing co-ordination between government institutions, or they may be publicly available, serving both to raise awareness of consultation opportunities and to allow interested parties more time to prepare for consultation.

Regulations define rights, obligations and powers. They must therefore always be constitutionally correct, clear and consistent with other regulations, including international obligations. Countries typically seek to ensure this through training in drafting skills for the preparation of regulations, including plain language, oversight by expert bodies, and/or specific guidance material for drafters.

Forward planning

- 33. Is there a system for forward planning of rule-making activity? What does it involve? What regulations does it apply to (primary laws, secondary rules etc)? What information is collected? Is the information made public? Is use made of electronic media?

34. What procedures are in place for the development of new regulations? For example are there requirements for consultation within government, outside government, publication, scrutiny by legislatures, due process for appeals? Who is responsible for enforcing the procedures?

Legal quality

35. Please describe arrangements to ensure the legal technical quality of regulations, including review of the legal basis and consistency with higher level regulations. Explain any processes of legal quality control by specialist bodies independent of the regulatory body, training programmes, recruitment.

Ex ante assessment of the impact of new regulations

Impact assessment 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 identifying the trade-offs involved when pursuing different policy objectives. Where relevant, the costs of regulation 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 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.

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).

36. Does the process of making regulations include an impact assessment? Please describe this in detail. What regulations are covered (primary legislation, secondary legislation or other, transposition of EC legislation)? What rule-making entities are covered (national levels of government, sub-national levels, agencies etc). What are the objectives and scope (economic effects, competitiveness, environmental, SMEs, social etc)? Specifically, does the impact assessment take into account potential economic impacts on SMEs, in terms of administrative costs? Are EU Internal Market effects considered?

37. Have guidelines been established? Is training in the use of impact assessment provided? Are there standard analytical methods to be applied, such as a benefit/cost test? Where the Standard Cost Model or equivalent is used for measuring administrative burdens, is this material (re)used in impact assessment analysis? How is expert support organized/acquired? Are priorities established for use of the process? How is consultation carried out and do these procedures link up with broader consultation processes?

38. How are responsibilities allocated in the institutional structure? Is there a central unit responsible for overseeing the process, and if so, what specific functions does it have (monitoring the quality of impact assessments, advice and training etc). What is the general academic profile of staff involved in these quality control functions (law, economics, science.)

39. What are the responsibilities of “client” ministries or entities which carry out the impact assessment?

40. Are impact assessment reports easily accessible for the general public (e.g. via the internet)?

Alternatives to regulation, delegated regulation, self and co- regulation

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. At the same time care must be taken when deciding to use “soft” approaches such as self and co regulation, to ensure that regulatory quality is maintained. The range of alternative approaches is broad, from voluntary agreements, standardization, conformity assessment, to self regulation in sectors corporate governance, financial markets and professional services such as accounting.

Delegated regulation and self regulation are significant areas. Governments may delegate rule- making, certification, or inspection and enforcement functions to non-governmental bodies. Self regulation may be an established feature for some sectors. Approaches of this kind can aid effectiveness by increasing acceptance of regulation, by drawing on relevant expertise, and by reducing costs. But problems can arise if self regulation is used anti-competitively and if transparency and accountability are undermined. Careful supervision by governments of delegated powers and is therefore necessary. Self regulation often requires monitoring to ensure that it is not being abused.

41. Please describe any arrangements to encourage the systematic consideration of alternatives to regulation (such as performance based regulation, tradable permits, taxes, self and co-regulation). Is there a requirement to consider “no action”? Is guidance available on using alternatives? Training? Are particular alternatives emphasized? At what stage in the policy process are these considered? To what extent are alternatives adopted, what type is most used, and in what policy areas?

42. Please describe any co-operative arrangements which delegate regulation to semi and/or non governmental bodies (industry associations and public corporations for example). Specify what regulatory functions are carried out by these bodies and in what policy areas they are used. Describe any safeguards on the use of these regulatory powers, including transparency arrangements, appeal mechanisms, government supervision and in particular, supervision of the competitive impacts of such regulation.

Risk based rule-making (optional/where appropriate)

A regulatory policy issue that is attracting increasing attention is risk management. Regulation is a fundamental tool for managing the risks present in society and the economy (societal risks such as environmental or health risks, as well market related risks). Regulation can aim to reduce the incidence of hazardous events or their severity. Some OECD countries have started to explore the ways in which regulatory policies can better reflect the need to assess and manage risks, and to put institutional structures, guidelines and procedures in place for this.

43. Does risk assessment/management (yet) form an explicit part of your overall regulatory management policy? Do you apply risk assessment, risk management and risk communication tools in the management and development of regulations? Are there specific institutional structures and procedures to cover these issues (for example as part of impact assessment, requirements for regulation to be based on evidence of risk, guidelines, or communication procedures)? How is the quality of the collection and use of scientific advice in the decision-making process secured (how are scientific advisers recruited, for example)? Are these structures and procedures generally applied or if not, in which sectors?

E. Tools and processes: simplification and measures to reduce administrative burdens (stock)

Simplification

The large stock of regulations and administrative formalities accumulated over time needs regular review and updating to weed out obsolete or inefficient material. Approaches vary from consolidation, codification, recasting, repeal, guillotine rule (nullifying rules that are not centrally registered by a certain deadline, which can be triggered by governments finding out that they are unable to compile a list of regulations in force), ad hoc reviews of the regulations covering specific sectors, and sunseting mechanisms for the automatic review or cancellation of regulations past a certain date. The concept of simplification can also be extended to the need to modernize existing rules in order to adapt regulatory frameworks to changing societal needs and technological developments.

The deployment of ICT and e-government is an increasingly important tool in support of simplification. Effectively implemented, these technologies should not only improve the ease with which information is available to business and citizens, but also be a lever of change in the 'back office' i.e. help to streamline the administrative processes themselves.

44. Do you have an explicit policy for the simplification of regulations, with specific targets and timelines? What is the relationship with the national administrative burden reduction programme?

45. Do you target a limited set of policy areas or all policy areas? Do you take into account stakeholders' input for determining the scope of the programme, and how do you collect this input?

46. Do you apply mechanisms such as review or sunset clauses to help you review whether existing regulations have become obsolete or need amendment? To what extent and in what specific way is codification used as a simplification tool? Have you implemented a "Common Commencement Date" scheme? Do you apply these mechanisms to existing regulations?

47. To what extent do you use ICT to support simplification of the regulatory environment for business and citizens?

48. Which authority is responsible for co-ordinating/monitoring the implementation of the simplification policy?

Burden reduction

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 licences can be a major potential burden on businesses, especially SMEs. A lack of clear information about the sources and extent of administrative burdens is the first issue for most countries. Burden measurement has been improved with the adoption by a growing number of countries of 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. Techniques such as Common Commencement Dates (CCDs) can make it easier for business to digest regulatory requirements. The use of electronic media also helps, by facilitating the provision of information to business and citizens, and promoting more efficient and user-friendly public services.

The use of ICT and e-government, by facilitating the provision of information to business and citizens, and promoting more efficient and user-friendly public services, is of increasing importance.

The role of local governments in burden reduction has tended to be overlooked in policies set at the national level and this needs further attention.

49. Please describe any explicit programmes aimed at reducing administrative burdens and formalities on business and citizens. Is there a national programme and has a national target been set for

administrative burden reduction? If there is a national programme, is it co-ordinated with the Commission Action Programme for reducing administrative burdens endorsed by the European Council in March 2007? In what way? What is the scope of the national measurement exercise (baseline, sectors)?

50. To what extent is the programme influenced or directed by stakeholders or their representatives? Who is responsible for submitting reduction proposals and is there any specific procedure for their adoption?

51. What is the methodology applied for measuring administrative costs? How are areas for burden reduction identified? What processes are used to address burdens (for example, one stop shops, use of electronic media, registry of business formalities, review of business licences and permits, simplification or repeal of legislative acts)?

Regulation inside government (optional/where appropriate)

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). The changing role of the state over recent years, often characterized as a shift to the “regulatory state”, means that tasks that used to be carried out within government have been progressively decentralized and delegated at arm’s length. At the same time the expectations of society in matters such as health and safety, environmental protection, and efficient public service delivery, have tended to rise. A growing framework of regulation is now in place to regulate the government’s decentralized activities (a mirror image, inside government, of the regulatory frameworks that have been put in place to regulate the liberalized and privatized companies which used to be an integral part of the state).

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. Fiscal 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.

The effective deployment of ICT and e-government is, again, of increasing importance as a tool for reducing the costs and burdens of regulation inside government.

52. Do you have any specific policy(ies), structures or other measures in place to manage administrative burdens inside government? If so please describe these in detail. What are the drivers for the policy? What is the role of ICT and e-government in addressing these burdens?

F. Compliance, enforcement and appeals

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. Within the EU’s institutional context these processes include the correct transposition of EU rules into national legislation. An ex ante assessment of compliance is increasingly a part of the regulatory process in OECD countries.

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. Tools that may be deployed include administrative procedures acts, the use of independent and standardized appeals processes, and the adoption of rules to promote responsiveness, such as “silence is consent”. Access to review procedures ensures that rule-makers are held accountable, accountability being a necessary corollary to transparency. Review by the judiciary of administrative decisions can 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.

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).

Compliance

53. How would you assess the general level of compliance with regulations? Are compliance rates monitored? If so please give details, including of the results. Is it possible to give an assessment of the level of compliance with regulations (if not generally, then in respect of particular sectors, good or bad)?

Enforcement

54. Please summarise your approach to regulatory enforcement (inspections, fees etc) and describe any specific enforcement policies, including resources devoted to enforcement. Is a risk based approach deployed at all- if so in what area? What is the trend? Is risk assessment a part of the approach to enforcement, or if not, are there plans to introduce measures that seek to ensure that enforcement activity is proportional to risk?

Appeals

55. Please describe the appeal processes for regulatory enforcement decisions- administrative or judicial. What is the role of judicial review in regulatory management?

G. The broader institutional structure: the interface between sub-national and national/federal levels of government

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/federal 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. 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. These issues have a direct impact on the welfare of businesses and citizens. The role of sub-national levels in regulation is of growing importance. The regional and local levels of government 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, sub-national levels of government may be taking on a growing responsibility for the implementation of EC regulations. An effective multilevel regulatory governance policy, in particular within the EU context, requires a pro active consideration of:

- 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.

Policies for Better Regulation

(For answer by the national/federal level of government)

56. Do sub-national levels of government set their own Better Regulation policies? To what extent do they share a Better Regulation agenda with the centre?

57. If the Better Regulation agenda is shared, what guidelines or requirements (such as impact assessment, consultation, simplification, administrative burden reduction) does the national level lay down for the sub-national levels to follow? Are there financial provisions to support this? Training? Is there consultation between the national and sub-national levels over this framework? How is the policy monitored and enforced?

58. If the Better Regulation agenda is determined at the sub-national level, can you make any general assessment of the degree to which they apply Better Regulation policies?

59. To what extent are sub-national levels involved in the EU's regulatory development process, in particular on topics that come within sub-national implementation powers?

(For answer by sub-national representatives who set their own Better Regulation agenda)

60. What policy or policies exist for Better Regulation (for example impact assessment, consultation, simplification, measures to reduce administrative burdens such as streamlining licences, use of alternatives to regulation)? To what extent has the promotion of Better Regulation become an explicit objective, beyond traditional regulatory management focused on legal quality? To what extent is ITC deployed?

61. Has the policy been communicated and if so to whom (for example to those inside government, to outside stakeholders such as business and citizens)?

62. Is there an explicit enforcement policy, including resources, for the regulations for which you are responsible? Does this incorporate a risk management approach?

63. What is the system of appeals (administrative, judicial) for your regulations?

64. Which part of the regional government structure or structures is responsible for the policy and its enforcement? How many resources are devoted to this?

(For answer by sub-national representatives who share a Better Regulation agenda with the national/federal level)

65. What are the issues and challenges involved in implementing national regulatory policy at your level? Is the quality or appropriateness of the primary legislation an issue? Is there excessive regulation coming from above?

Regulatory co-ordination

66. What co-ordination mechanisms exist between the national and sub-national levels of government to network on, discuss, agree and promote regulatory quality?

67. What co-ordination mechanisms exist across the same levels?

68. What mechanisms exist to resolve overlapping competences or disputes as regards responsibilities for rule-making, and for Better Regulation?

69. Are there requirements for co-ordination with the national/federal authorities to ensure the consistency of sub-national regulations with national and EU regulations?

H. The broader institutional structure: the interface between the national/federal level and the EU

The effective negotiation and transposition of regulations emanating from the EU is of growing importance for member states, with an increasing proportion of national regulations originating at EU level. Whilst EC Regulations (not to be confused with the generic use of the term “regulation” for this project) 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.

The role of sub-national levels of government appears to be of growing importance for the implementation of regulations that start at the EU level. Examples of the kind of regulation that has a direct impact on local governments include public procurement, food policy and environmental standards. The role of independent regulatory agencies is also important, for example as regards EC regulations for the infrastructure sectors.

The national/federal and sub-national perspective on how the production of regulations is managed at the EU level is important. Better Regulation policies, including impact assessment, have been put in place by the EU 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.

Negotiation

70. Please describe the mechanisms in place to guide your country’s negotiations in Brussels on EC regulations. How are responsibilities allocated? What mechanisms are in place to solve conflicts regarding responsibilities? Is guidance available? Are key stakeholders consulted and if so how? Are regulations to give effect to EC regulations subject to any form of impact assessment?

Transposition

71. Is responsibility for the transposition of EC regulations clearly allocated, including at sub national levels of government and with agencies? What is the process for allocating responsibilities? What mechanisms are in place to solve conflicts regarding responsibilities? Are key stakeholders consulted and if so how? How is transposition monitored, and who does this? Do you have transposition rates? Do you draw up correlation tables (to show the relationship between national regulations and EC regulations) and if so, are they published? Are guidance materials available? Is gold plating a concern, and if so, have measures been taken to reduce this? How rapidly is transposition carried out?

72. As regards EC Regulations, is there a specific procedure that ensures consistency of national legislation with EC Regulations and the removal of potential discrepancies?

Interface with Better Regulation at the EU level

73. Are there any issues to which you would draw attention regarding the processes for the production of regulations at the EU level, which have a significant impact on Better Regulation at the national/federal/subnational level? For example, do you have any comments on the interaction of EU and national/federal/subnational Impact Assessment processes for the development of new regulations?

I. Ex post evaluation of regulations and regulatory policies

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 assessment 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? Do effective regulatory policies and tools for Better Regulation deliver effective regulation? What contributes to the effective design of regulatory tools and institutions? Part of the answer to developing a better understanding of the link between regulatory quality processes and actual regulatory performance is the application of ex post evaluation and measurement techniques. Some countries already have an explicit strategy for the ex post evaluation of these issues (covering for example impact assessment, consultation mechanisms, simplification and burden reduction strategies, and institutions such as central units and independent regulators). Evaluation can help to strengthen these tools and institutions. Challenges remain, including methodological challenges, resource issues, some resistance from participating institutions, the need to find a home for regular audits, and data problems.

A yet more difficult challenge is to assess the link between well functioning regulatory management and outcomes for broad areas of policy or for the economy and society, such as productivity performance. How is Better Regulation linked, and how does it contribute, to performance at these levels? How can we tell? Are there any specific examples of regulations or regulatory frameworks which can be demonstrated to underpin an effective policy (or conversely of regulations that have failed to support policy goals)?

Ex post monitoring and evaluation

74. What specific regulatory management tools and processes have been evaluated or measured for their effectiveness? Are policies for Better Regulation as a whole monitored and evaluated, and if so, by whom?

75. Has there been an evaluation of compliance with impact assessment policy? Have individual impact assessments been evaluated ex post and compared with outcomes? What are the conclusions? What have been the key challenges? Have changes been made to the policy as a result?

76. Do you monitor progress on simplification? What are the conclusions? What have been the key challenges? Have changes been made to the policy as a result?

77. Do you monitor progress on administrative burden reduction? What are the conclusions? What have been the key challenges? Have changes been made to the policy as a result?

78. What are the institutions involved (for example, national/federal/subnational audit office, parliamentary committees)?

Better Regulation and economic societal outcomes

79. Have any measures or indicators of the costs and benefits of Better Regulation tools and processes been undertaken (quantitative or qualitative), in terms of better economic performance (GDP growth, productivity), more effective policy outcomes, effects on particular groups such as SMEs, sectors such as the network industries, or product and labour markets? If so, what are the conclusions?