THE EVOLUTION OF REGULATORY POLICY IN OECD COUNTRIES

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In the past 20 years a key topic of public sector reform in OECD countries has been the emergence of regulatory policy. During this period, the nature of regulation has undergone profound and rapid change. It evolved from early efforts of eliminating regulation and gave way to more systemic regulatory reform, involving a mixture of de-regulation, re-regulation and improving the effectiveness of regulations. However, these initial formulations of regulatory reform often assumed that change was episodic in nature. Moreover, they aimed to restore a regulatory structure to some ideal state through a one-off set of interventions. Experience demonstrated that such views were untenable and they gave way in turn to the concept of regulatory management. Regulatory management differed in seeing the process of reform as being a dynamic one. With time, the process became increasing integrated into public policy making. Today, almost all OECD countries have established explicit institutions and tool to implement regulatory policy. As with other core government policies, such as a monetary or fiscal policy, regulatory policy is an integral role of government and is pursued on a permanent basis.

This paper documents the development of the regulatory policy agenda. It reviews policies, tools and institutions adopted in OECD countries, identifying the most promising practices as well as less successful initiatives.[1]

History

The history of regulation is not one of coherent government strategy, but rather of reactions to the changing objectives and requirements in different countries, industries, and policy contexts. Following the rapid growth in the scope and scale of regulatory interventions through most of the twentieth

[1] This paper draws extensively from *Regulatory Policies in OECD Countries. From Interventionism to Regulatory Governance*, Paris, 2002 and a series of *OECD Regulatory Reform Reviews*, available at www.oecd.org/countrylist/0,2578,en_2649_37421_1794487_1_1_1_37421,00.html.

century, shifts in the economic environment began to reveal more clearly the previously hidden costs of out-dated, low quality and constantly expanding regulatory structures. Yet, while the problems caused by poor quality regulation were increasingly apparent, reform was consistently being delayed or blocked.

For many years, the complexity of reform and uncertainty about its expected results blocked progress. This was due in part to policy fragmentation in the structure of government. Governments lacked the co-ordination and planning capacities necessary to move forward with horizontal packages of policies and reforms. Governments also gave too little attention to reviewing, updating, and eliminating unnecessary or harmful regulation. Many regulations currently on the books date from periods earlier in 20th century when economic and social conditions were very different from what they are today.

Incentive structures within bureaucracies did not encouraged effective and accountable use of policy. Incentives too often favoured vocal rather than general interests, short-term rather than long-term views and the use of traditional controls rather than innovative approaches. Vested interests were able to block needed reform, even when the benefits to society at large were vastly larger (though diffuse) than the concentrated (and highly visible) costs to the interest group. Most government officials were not equipped to assess the hidden costs of regulation or to ensure that regulatory powers were used cost-effectively and coherently.

The locus of regulatory authority also became diffuse. Regulatory powers increasingly were exercised at sub-national or supra-national levels. This increased the tendency for duplicative, conflicting, or excessive regulations to arise, as co-ordination between different sources of regulatory power was often rudimentary or non-existent.

In sum, a complex array of factors fuelled what is now called regulatory inflation. At the same time, few efforts were made to develop an understanding of the nature of regulation as a policy tool. The emergence of deregulation and regulatory reform in the 1970s constituted some of the first attempts to address this question of the nature of regulation, and its limits as a policy tool. But the need to better understand the regulation was not at the heart of the reform agenda at that time.

The first efforts at “deregulation” were driven by economic downturn and were based on the view that a too great a quantity of regulation was impeding the economy by strangling innovation and entrepreneurialism. However, these early attempts at “deregulation” were, at best, only partially successful. But as the process continued, as deregulation gave way in the 1980s and 1990s first to regulatory reform, then to regulatory management and, more recently, to the developing a regulatory policy agenda.

“Deregulation” was superseded by “regulatory reform” and then by “regulatory management” quite early in the development of the current regulatory policy agenda. This change entailed a shift away from questions of what regulation should be eliminated and toward how regulatory structures could be improved in terms of design and functioning. Over time, the key elements of regulatory quality management emerged from the experiences of the reformers.

Attempts to promote regulatory quality were first focused on identifying important areas of poor quality regulation, advocating specific regulatory reforms and scrapping burdensome regulations. Increasingly it was recognised that ad hoc approaches to reform were insufficient. The size of the task required co-ordinated action on many fronts, while the benefits of consistent approaches and the wide application of policy learning, were too substantial to be foregone.

Thus, the reform agenda began to broaden to include the adoption of a range of explicit overarching policies, disciplines and tools. These became permanent, rather than episodic in nature. At the broadest level, this shift has meant providing explicit policy support for the regulatory reform agenda, by adopting a reform policy at the "whole of government" level, often with timelines, targets and evaluation mechanisms. It has also included the adoption of consistent approaches to the rule-making process and the implementation of new policy tools such as the use of regulatory impact analysis, administrative simplification and regulatory alternatives. Perhaps most importantly, the adoption of regulatory policies has meant that responsibility for elements of the programme has been allocated to specific government agencies.

Regulatory Policies

Regulatory policy is the systematic development and implementation of government-wide tools and institutions used to shape the on how governments use their regulatory powers. This includes integrating competition policy and market openness initiative in the regulatory policy agenda and changing the culture of regulators so that flexibility and outcome oriented approaches are systematically favoured in regulatory design.

All regulatory policies are based on a mix of economic, legal, and public management principles. The underlying policy objectives sought are largely common among OECD countries, though the emphases may differ widely, reflecting their different specific circumstances. Some examples can illustrate the diversity of policy approaches in facing specific policy challenges. In Japan and Korea - where there was a widely held view that the major regulatory problem was one of over-regulation and state interference in the economy - the focus has been on reducing the economic role of the state through deregulation. In the United States – with relatively few barriers to entry in most sectors but a costly federal regulatory structure in social policy areas - the focus has been on improving regulatory quality through rigorous application of benefit-cost principles. In the Netherlands - which was re-orienting the corporatist state toward a more market-based relation - the regulatory agenda has focused on public consultation and the reduction of administrative burdens. In Mexico - which has been integrating its regulatory frameworks into the NAFTA - the priority has been to eliminate inconsistent and overlapping regulation and improve the credibility and enforceability of the law.

While the varying political, constitutional, and administrative environments of OECD countries require different models, the basic elements of effective tools and institutions do not seem to change across countries. Countries with explicit regulatory policies consistently make more rapid and sustained progress than countries without clear policies, see OECD (2002a). The more complete the principles, and the more concrete and accountable the action programme, the wider and more effective was reform.

A regulatory reform policy serves several important purposes in implementing, sustaining and deepening regulatory reforms. It signals the government's commitment to reforming the regulatory environment government-wide. This enhances the effectiveness of co-ordination and co-operation efforts among related structural reforms, such as competition policy, corporate governance and sectoral reforms.

A regulatory reform policy authorises and mobilises action in the administration, improving public sector efficiency, responsiveness, and effectiveness through public management reforms. Reform can be risky and unwelcome for many civil servants, particularly when vocal interest groups support the status quo. Political support and direction is needed both to overcome resistance internal to the administration, and to shield reforms from aggrieved interests.

Regulatory reform policy also helps show politicians and the public why the policy objectives are important. The need for political support means that the relevance of regulatory reform to larger social and economic goals must be clarified and communicated with stakeholders and the public.

In addition to these points, adopting an explicit policy is highly important from the governance perspective. It means that government is making transparent the objectives and strategies of its reform programme, and so creates accountability for the outcomes. Accountability here has both the dimension of government accountability to citizens and accountability by regulators toward government for delivering on the stated policy. Also, as noted above, adoption of an explicit policy favours coherence between it and other related arms of policy.

OECD (2002a) also provides an extensive analysis of the key weaknesses in the implementation of regulatory reform policies. The major weaknesses identified are:

- Lack of clearly specified regulatory quality principles, in particular explicit adoption of the benefit/cost principle, and lack of clarity as to the results to be achieved.

- Important gaps in the coverage of the policy, both in terms of the range of national regulation included within its ambit (primary, secondary regulation, regulation not approved by Cabinet, sectoral regulator's regulations, etc.), in terms of the almost universal exclusion of sub-national regulation, as well as substantial exemptions from the policy's general ambit.

- Lack of consultation during policy development, leading to a lack of public support for regulatory policy.

- Lack of institutional and strategic support to sustain the policy, with fragmentation of responsibility being of paramount concern in the face of entrenched opposition.

- Lack of guidance on implementing the policy, for Ministries and other agencies of government.

- Lack of enforcement powers and mechanisms for the institutions made responsible of the policy.

- Insufficient focus on monitoring, evaluation and reporting progress, both as a means of policy feedback and as a means of maintaining and expanding constituencies for reform.

Tools to Improve Regulatory Design

The task of improving regulatory decision-making has a number of dimensions. A range of tools must be deployed in a consistent and mutually supporting manner if systemic quality assurance is to be the result. The essential tools are regulatory impact analysis, administrative simplification, public consultation and consideration of regulatory alternatives. The use of regulatory impact analysis is progressively improving the empirical basis for regulation in most OECD countries. Its role in this regard is supported by greater dialogue with affected parties, through the increasing use of a range of consultation processes and tools. In addition, the policy-makers' "tool-box" is expanding, as greater attention is given to alternatives to traditional "command and control" models of regulation. Finally, numerous efforts to improve the "user friendliness" of regulatory requirements are being put in place, often under the heading of "administrative simplification" or "red tape reduction". These are

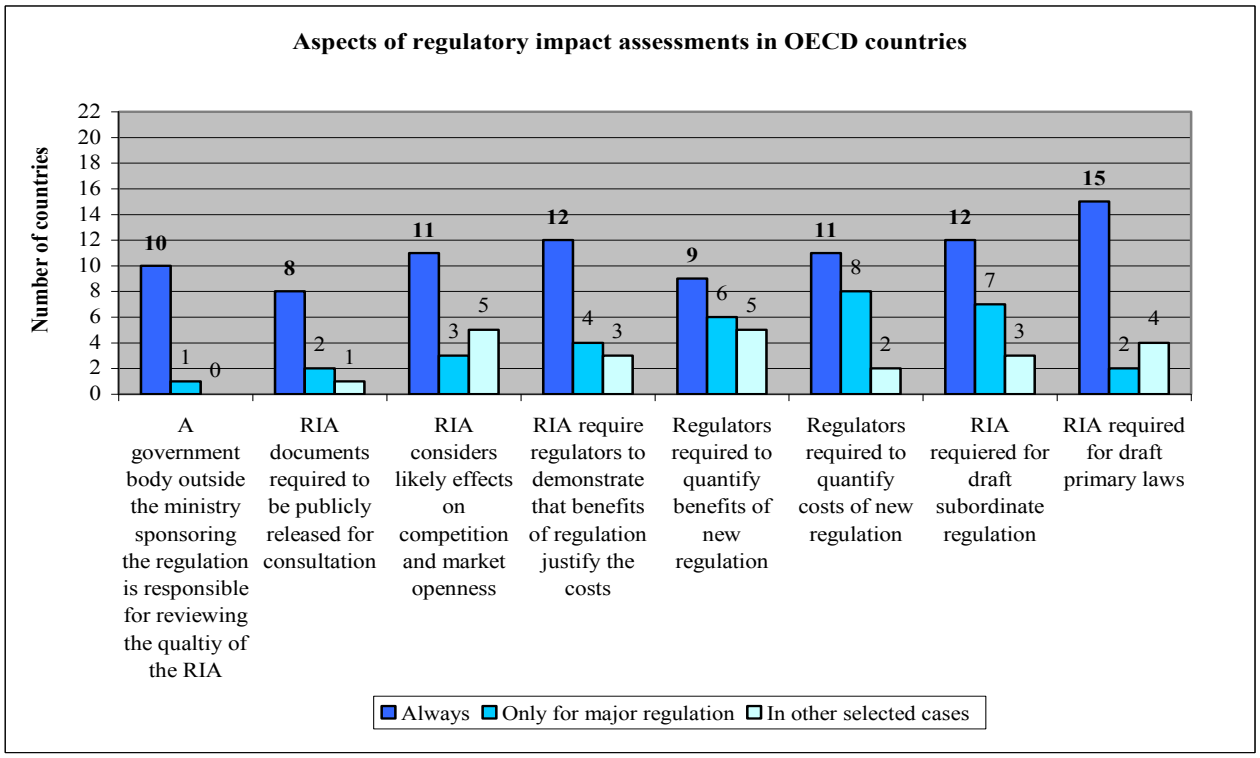
programmes that seek to reduce compliance costs without compromising regulatory benefits by improving compliance requirements and increasing access to regulation.

Regulatory Impact Analysis

A trend toward more empirically based regulation is underway in OECD countries. High-quality regulation is increasingly seen as that which produces the desired results as cost-effectively as possible. The widespread use of Regulatory Impact Analysis (RIA) is a clear example of the trend towards more empirically based regulation and decision-making. RIA examines and measures the likely benefits, costs and effects of new or changed regulations. It is a useful regulatory tool that provides decision-makers with valuable empirical data and a comprehensive framework in which they can assess their options and the consequences their decisions may have. A poor understanding of the problems at hand or of the indirect effects of government action can undermine regulatory efforts and result in regulatory failures. RIA is used to define problems and to ensure that government action is justified and appropriate.

Many OECD countries have substantial experience in RIA. The majority began to introduce it during the latter half of the 1990s. The use of this tool spread rapidly, and today the governments of most OECD countries rely on at least some form of RIA (see Figure 1).

Figure 1. Aspects of Regulatory Impact Analysis in OECD countries



OECD practices

There is no single model that OECD countries have followed in developing RIA programmes. Their design has take into account the institutional, social, cultural and legal context of the relevant

country. That said, the experiences of OECD countries have made it possible to establish certain practices associated with effective RIA.

To be successful in changing regulatory decisions in highly-charged political environments, the use of RIA must be supported at the highest levels of government. The most effective programmes have been those that require RIA as a condition for the consideration of new regulations and laws. To achieve this goal, high-level instruments such as laws or prime-ministerial decrees supporting the use of RIA are essential. In Italy, for instance, a prime-ministerial decree in March 2000 formalised a Legal Technical Analysis (*Analisi tecnico-normativa*) and a full Regulatory Impact Assessment must be submitted with any draft text to the Council of Ministers. Mexico integrated the use of RIA in amendments to its Federal Administrative Procedure Law in 2000.

Responsibilities for RIA are generally sharing them between ministries and quality control bodies. In a majority of OECD countries, ministries are primary drafters of both RIAs and regulations. Ministries have better access to the expertise and information that high-quality RIA depends upon. A number of OECD countries have found that a centrally located body can have an important role in quality control and oversight of RIA. Australia, Canada, Czech Republic, Hungary, Italy, Korea, Mexico, Netherlands, Poland, Sweden, Switzerland, United Kingdom and United States have independent central bodies for quality control. In Canada, Korea and the UK, these independent bodies have the right to ask ministries to revise drafted regulation.

Determining which method to apply is a central element of RIA design and performance. Several RIA methods are commonly used in OECD countries. Australia, Canada, Denmark, Italy, Japan, Korea, Mexico, New Zealand, Norway, Poland, the United Kingdom, and the United States have a similar impact analysis system with regards to scope of coverage, quality control, cost-benefit analysis, and the consideration of effects on competition and market openness. A number of other OECD countries have somewhat different systems: The Netherlands has adopted the Business Effects Analysis, focusing on the impacts arising from business; the Czech Republic uses a system that measures Financial and Economic Impacts; Austria, France and Portugal use Fiscal Analysis, focusing on the direct budget costs for government administration; Finland has a wide range of partial impact analyses that are not integrated and performed by various ministries; Belgium carries out risk assessment in cases of health, safety and environmental regulations; Spain fills in a checklist on the impacts arsing from regulations.

OECD (2004) found that governments tend to improve RIA programmes gradually, so that over time they increasingly support application of the benefit-cost principle. This step-by-step approach should helps to instil the benefit-cost principle as routine, while acknowledging the practical and conceptual difficulties this analytical method poses in the short term.

Ideally, RIA should be applied to all significant regulatory requirements, regardless of their formal legal status. But analytical capability is a scarce resource that needs to be allocated using some rule of reason. Countries often target RIA where regulatory outcomes will have a noticeable economic impact. In the United States, a full benefit-cost analysis is required if a regulatory measure is deemed "economically significant" – if it is expected to represent annual costs exceeding USD 100 million; if the measure is likely to impose a major increase in costs on a specific sector or region; or if it will have significant adverse effects on competition, employment, investment, productivity or innovation. The United States' Office of Management and Budget reviews roughly 600 regulations a year (15-57% of the regulations published), of which fewer than 100 (1-2% of the regulations published) are considered "economically significant"

Targeting has two significant benefits. First, focusing RIA resources on key areas enhances the credibility of its results and increases the rewards that ensuing policy improvements bring. Second, because the RIA process has to be supported at both the administrative and the political levels, it is important that stakeholders do not view RIA as simply a costly bureaucratic process that analyses insignificant policy proposals with little to be gained by the exercise.

Data collection is one of the most difficult parts of RIA. The usefulness of a RIA depends on the quality of the data used to evaluate the impact of a proposed or existing regulation. The information that RIA requires can be collected in numerous ways. Public consultation is an important collection method, but it must be carefully structured and the information it provides should be carefully reviewed and tested to ensure it is of the quality needed for quantitative analysis. A number of countries have found that regulators can ensure better data quality by involving expert groups in the consultation process, such as academic and other research bodies that do not have strong sectional interests in the issue. In Italy, the government publishes a manual that outlines a number of possible RIA data collection methods, including opinion surveys, direct interviews, and the use of focus groups. Denmark uses a similar approach, publishing "Business Test Panels."

Regulators must have the skills to conduct high-quality RIA. It is particularly important to provide training in the early stages of a RIA programme, when both technical skills and the cultural acceptance of the use of RIA as a policy tool need to be cultivated. A high level of investment is often required to assist in developing the broader cultural changes that must be achieved across entire organizations. RIA manuals and other guidelines have been important complements to training, but not a substitute for it. The United Kingdom has placed considerable emphasis on strengthening it RIA capacity. Government policy and guidance for regulators and policy-makers on how to prepare RIAs are set out in the website *www.cabinetoffice.gov.uk/regulation/ria/index.asp.*

Problems and limitations

RIA is a challenging process that needs to be built up over time. It has to be integrated into the policy-making process if the disciplines it brings are to become a routine part of policy development. RIA has been seen in some administrations as an obstacle to decision-making or legislative work. In those situations when RIA is undertaken in the early stages of the decision-making process, it does not appear to slow the process down. Where RIA is not integrated with the policy-making process, impact assessments can become merely justifications of decisions after the fact. Integration is a long-term process, which often leads to significant cultural change within regulatory ministries and among consumers of the analysis, primarily ministers and legislators.

The overall assessment of RIA is mixed. There is nearly universal agreement among regulatory management offices that RIA, when it is done well, improves the cost-effectiveness of regulatory decisions and reduces the number of low-quality and unnecessary regulations. Undertaken in advance, RIA has also contributed to improve governmental coherence and intra-ministerial communication. Formsma (1997) estimates that in the Netherlands 20 percent of regulatory proposals are modified or retracted as a result of RIA. Canada (2001) shows that prolonged use of RIA, together with the provision of guidance and training, has induced a cultural change among regulators.

Yet positive views continue to be balanced by evidence of non-compliance and quality problems. The scope of coverage of RIA remains patchy and exemptions are often broad. RIA is rarely used at regional or local levels.[2] Uneven coverage of RIA programmes seriously reduces effectiveness. Moreover, RIA is most of the time applied to a single regulation, rather than regulatory regimes as a

[2] Australia is a notable exception, where several Australian states have pioneered the use of RIA.

whole. It thus can provide only very broad estimates of the cumulative impacts. Lastly, RIA has mostly been designed for command and control regulations. The increasing use of performance-oriented regulations and regulatory alternative provide substantial challenges to the effectiveness of RIA. The result of these limitations is likely to be the need for further consideration of the design and implementation of RIA requirements, including evaluation of its effectiveness in assessing the likely performance of non-traditional instruments.

Administrative simplification

One of the most widespread complaints raised by businesses and citizens in OECD countries concerns the amount and complexity of government formalities and paperwork. Enterprises and citizens spend considerable time and devote significant resources to activities such as filling out forms, applying for permits and licences, reporting business information, notifying changes etc. In many cases, practices have become extremely complex, or irrelevant and cumbersome, generating unnecessary regulatory burdens – so-called "red tape". The costs imposed on the economy as a whole are significant. When excessive in number and complexity, administrative regulations can impede innovation, create unnecessary barriers to trade, investment and economic efficiency, and even threaten the legitimacy of regulation and the rule of law.

In response to these challenges, OECD governments have over the past two decades increasingly focussed on reviewing and simplifying red tape. Initiatives to improve the efficiency of transactions with citizens and business have included removing obsolete or contradictory provisions, producing guidelines on administrative regulations, and introducing new ways to measure administrative regulations and reduce their impact. Increasingly, innovative thinking and skilful use of information technology (IT) are leading to new and more effective approaches to administrative regulation.

OECD countries have focused on four broad trends in their efforts to cut red tape. First, and among the most important, is a gradual shift from an approach focused on easing administrative burdens after the event to one that recognises the need to ensure that unnecessary or unreasonable burdens are not implemented in the first place.

Second, while simplification initiatives have generally been "bottom-up" in nature over the past years, they are being supplemented by "top-down" initiatives by governments and increasingly integrated into broader reform programmes. Typical bottom-up initiatives are business licence services. They often initially serve a specific need of a particular constituency, but tend to broaden their profile over time by identifying additional information and transactions of value to the same or related constituencies A prime example of "top-down" initiatives is the adoption of government Web portals and the merger of one-stop shops.

Third is a trend toward market-based policies that encouraging simplification. Administrative simplification policies are increasingly influenced by the idea that economic agents should be free to conduct their business unless compelling arguments can be made for the need to protect the public, replacing previous more restrictive approaches to reform.

Finally, IT is putting governments under increasing pressure to cut red tape. IT is not only the most important "physical" tool enabling governments to reduce the amount of paper-shuffling involved in dealing with the public and business; it also provides strong dynamics and pressure to reduce administrative burdens. The exposure on the Internet of bureaucratic, unclear or duplicative forms has in many cases triggered strong direct reactions from users and media. Such pressure often goes beyond aspirations for further "simplification" of regulations. They can also lead to substantial changes in regulations and how they are applied.

In the absence of evidence-based appraisals, policies to simplify administration are often made in an information vacuum, where governments are unaware of the actual size of the burden and unable to measure progress and setbacks in reducing it. Measuring the existing administrative burden can be an important approach to foster political support for developing a policy to reduce it. Determining the size of the existing administrative burden can also form the basis for evaluating what policy initiatives are needed to improve and sustain long-lasting government efforts.

Improving rule making ex ante

An important trend amongst countries is to avoid the creation of administrative burdens by improving rule making *ex ante*, operating procedural controls prior to the introduction of new legislation or regulation. This control is mainly done during the RIA process in OECD countries. RIA has proven to be a useful instrument for reducing or minimising administrative burdens. While the focus of RIAs is not specifically on reducing administrative burdens, they do assist in stemming the tide of new burdensome regulation. RIAs ensure that regulatory proposals or existing regulatory arrangements are subject to a transparent, publicly accountable and rigorous analysis to determine if they meet regulatory objectives while limiting costs. RIA is also important in that they focus increasingly subordinate legislation.

In countries where RIA procedures are well established- such as Australia, Canada, the United States, the United Kingdom and New Zealand -burden reduction policies have been strongly linked with *ex ante* assessment processes. A major objective of these procedural controls on the substance of proposed regulation is to ensure that a rational approach to the achievement of policy goals has been taken during policy development, and that this has been informed by the involvement of a wide range of affected groups. A growing number of countries have introduced impact assessment systems which specific focus on administrative burdens and apprehends precisely the potential burden creation of new regulation. Germany has introduced the criterion of administrative burdens in its RIA system in 2004. The European Commission has introduced a special analysis of these burdens early 2006. Belgium is assessing the potential impact of new regulation in terms of administrative burdens using a simplified RIA, called the "Kafka Test". In most other OECD countries there is a trend to increase action *ex ante*. In Sweden priority has been given to the reduction of new burdens in recent years by focusing on the assessment of new or altered regulations. Japan's simplification strategies are principally relying on *ex ante* mechanisms to control burden creation.

One of the limits to the attempt to avoid the creation of administrative burdens by improving control on rule-making *ex ante* is that these estimates — on the potential burden of new or modified existing regulation — sometimes differ from the actual burdens experienced as a result of the regulation. To address this issue *ex post* reviews are increasingly seen as necessary so that regulations would be reviewed after they are implemented to ensure that they are having the intended effect. This allows checking the performance of regulation against initial assumptions and is a powerful adjunct to *ex ante* review. The United Kingdom has for example decided to strengthen the RIA system by introducing a monitoring of regulations following their introduction. As set out in the Budget for 2005, departments have to explain how the regulations for which they are responsible are going to be monitored using post-implementation reviews, before these are introduced.

New approaches to control administrative burden creation have emerged. Some countries, such as the Netherlands or the United Kingdom moved towards adopting a framework for managing regulation that provides a better balance or compensation between the creation of new measures and the simplification of existing regulations. The rationale of such measures is to centrally manage and control the development trend in administrative burdens within each line ministry as well as globally across the range of government institutions. The United Kingdom government explored adopting a

"One in, one out" approach as advised by the BRTF in 2005. Departments would be forced to remove unnecessary and outdated regulations as part of the RIA process when new regulations are being proposed. It involves that major regulatory proposals require consideration of compensatory simplification measures during the RIA process. New regulations could therewith only be proposed if the scope of off-setting simplifications has been addressed. This proposal has, however, not been included in the 2006 New Regulatory Reform Bill which is currently in discussion. In the Netherlands, the Dutch cabinet target of a 25% cut of the burden has been translated into reduction targets per ministry. Whenever the limit is exceeded because of the administrative burden in new legislation, ministers are obliged to compensate with new reductions. This limitation of the administrative burden compels a ministry to moderate production of new burdensome legislation and ensures a process of permanent monitoring over ministerial production of administrative burdens.

Electronically-based delivery mechanisms

Administrative simplification has benefited from the unprecedented and rapid development of IT-based tools: these offer possibilities for greater coherence and efficiency between regulatory interactions between government, businesses and citizens. IT mechanisms are essential tools in as they are important "physical" enablers of burden reduction. They involve a mix of information dissemination and transactional aspects.

The traditional informational approach is the "one-stop shop" for obtaining information. One-stop shops can be defined as offices where applicants and others interested in government services can obtain the information necessary to their query in one location. They are also referred to as "service counter", "single window" or "information kiosk". One-stop shops are primarily designed to provide integrated and seamless services with as few and as easily accessible points of contacts with the clients as possible. The objective behind the one-stop shops has been to provide substantial savings in information search and transactions costs for users in relation to a wide range of interactions with government. There is evidence that many of the variations of the basic idea of one-stop shops have been successful in reducing administrative burdens on businesses and the general public, see World Bank (2004). Gains have been experienced in reductions of time and the cost invested in seeking information, especially on licence and permit requirements.

Delivery mechanisms have expanded from traditional methods, such as face-to-face interviews to telephone and mail, to the use of IT-based tools, most importantly web portals. Today, OECD countries are focusing on developing "multi-channel" delivery services to improve and facilitate a user's access to public services - channels involved can range from traditional channels, such as the counter and telephone, to electronically enabled channels: Internet, e-mail, SMS, digital television. [3]

[3] In **Spain**, information technology initiatives have provided better and faster access to public services and products. The government has been working on a series of initiatives to improve regulatory information. Most are based on a growing use of information technology. An important scheme has been the setting up of a consolidated registry of administrative procedures on the Internet. An ambitious project to create one-stop shops (Ventanilla Unica) has been launched, and will soon be supported by citizens' assistance centres (Centros de Atención al Ciudadano). These initiatives are closely connected with the administrative simplification policy. The Ministry of Public Administration is developing information technology systems to support the expanding Web of one-stop shops. The PISTA project will permit the interconnection of registers and files of all the administrations. "Positive security" means that regulations must be included in the registry to have legal effect, which ensures against any non-compliance by ministries.

In **Hungary**, the government has developed an online system through which businesses can complete mandatory registration forms and send them through the Chambers' offices to the Court of

Notwithstanding the fast growth of Internet-based one-stop shops, physical one-stop shops remain an important means to reduce administrative burdens for citizens and business. These enjoy qualities, such as personal advice and guidance, or a level of accountability through the personal involvement of civil servants that web-based one-stop shops cannot offer. Physical one-stop shops are also important in the light of the existing digital divide: the gap between those who have access to the use of ICT and the Internet and those without. Some businesses – for examples SMEs - or groups of citizens might have little or a difficult access to government services provided electronically.

The use of IT made a relevant contribution to the advancement of the one-stop shop concept with the availability of various services online through generalized or specialized portals (electronic one-stop shops). In most OECD countries, one-stop shops and specific purpose portals have been integrated into a broader e-government framework, where one-stop shops have merged into the adoption of government wide portals.

To a substantial extent, these portals can be regarded as burden reduction initiatives: they are based around the presentation of existing information and requirements in a more cost-effective manner through the application of technology. As such, they provide substantial savings in information search costs for both citizens and businesses in relation to a wide range of interactions with government. In addition, they are also rooted in concepts of transparency and accountability for good government by making access to government easier.

In OECD countries, administrative simplification is increasingly linked to the setting up of e-government programmes and governmental portals. E-government systems deliver administrative simplification primarily through improved accessibility of information and services and the creation of more integrated and seamless government services. Increasingly, administrative simplification policies are becoming important parts of e-government plans and much e-government activity is pursuing administrative simplification. This is also reflected in the institutional framework of countries, notably

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Registration. The Ministry of Justice's Company Registration and Company Information Services co-ordinate the computerized system, which has greatly improved the reliability of Hungary's company registry.

In **Denmark**, information technology is being used as part of an effort to reduce administrative burdens. The Danish government requires that all forms used by businesses in communicating with public authorities be made available on the Internet. Legislation and regulations are published in the official publication, Lovtidende ("legal gazette"), which is also available on the Danish parliament's website. Since 1999, Denmark has also published business impact assessments on the Internet.

In the **United States,** the electronic one-stop site, www.business.gov, provides practical assistance to businesses through FAQs (frequently asked questions), an advanced search function to find federal information, the option to browse through government documents, and the inclusion of business-related items from federal agencies. Dissemination of information in this way typically knows no borders, and access to online information is unrestricted and free of charge.

In **Mexico**, the Federal Regulatory Improvement Commission (COFEMER) has developed online systems for most of its programmes, including the Federal Registry of Formalities and Services as well as links to one-stop shops. This Registry included more than 2,400 business formalities applied by federal authorities, and became the data set of existing formalities to be reviewed. Also a free telephone service was established to provide access to the information in these inventories. Similar approaches are now being pursued in states and municipalities. Based on the six digit ISIC definition of activities, a user-friendly online search tool (available on www.cde.gob.mx) permits any person to retrieve a list of formalities needed to start up or operate a business. The submission of RIAs was also put through an online system, resulting that in 2004, 95% of RIAs prepared by federal agencies for COFEMER were submitted online.

in France, the United States, or the Czech Republic, where the same departments are responsible for administrative simplification and e-government programmes.

Anchoring simplification strategies on quantitative evidence

Despite the numerous administrative simplification initiatives launched by OECD governments over the past decades, governments have not always had a detailed understanding of the extent of the burdens imposed on businesses and citizens. Policy has often been made without a clear understanding both of the actual size of the burdens and of the progress that can be made in reducing these. To have a clearer idea of the extent of the burden many OECD countries have attempted to measure burdens, either through business surveys, or through quantitative evidence-based approaches. OECD countries' experiences suggest that quantitative approaches are increasingly supplementing or substituting business surveys as the primary source of information for assessing the burdens.

One of the initial methodologies to measure the administrative burdens on business is the Standard Cost Model (SCM) developed by the Netherlands. The SCM measures the administrative costs imposed on business by central government regulation.[4] The costs are primarily determined through business interviews. These interviews generate data and make it possible to specify in details the time companies spend complying with government regulation. The SCM breaks down regulation into individual components that can be measured: information obligations, data requirements and administrative activities. The SCM then estimates the costs of these component basis of three cost parameters: 1) price, which consists of a tariff, wage costs plus overhead for administrative activities done internally or hourly costs for external services; 2) time, which includes the amount of time required to complete the administrative activity; and, 3) quantity: which comprises of the size of the population of businesses affected and the frequency that the activity must be carried out each year. The combination of these elements gives the basic SCM formula: Cost per administrative activity = Price x Time x Quantity.

In order to measure regulatory burdens or to evaluate programmes for reducing regulatory burdens with the SCM, a number of countries have developed a "baseline measurement" of the administrative burdens of all existing legislation. This baseline measurement gives an overview of the regulation and a total figure of the administrative burden on businesses; it also shows where burdensome information obligations and related activities lie, and whether they have a national or international in origin. The Netherlands started measuring the total extent of burdens on business with the SCM at the end of 2002.[5] The total of all administrative burdens as of 31 December 2002 were estimated to €16.4 billion (3.6% of the Dutch GDP). The burdens imposed by the ministries of Finance, Health and Social Affairs and Justice account for more than three-quarters of the total amount of administrative burdens on business. Denmark also completed measuring the baseline of all administrative burdens early 2006. The baseline measurement includes a measurement of all business related regulation in 16 different ministries.[6]

The SCM has been adopted by many European countries because it allows identifying simplification potential in international and European Union regulation, for example through benchmark studies between countries using the same methodology. The focus of the joint benchmark was to analyse how EU legislation is implemented at national level and to assess the results in terms of

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4 Detailed information about SCM mythology can be found in "*The Standard Cost Model; a framework for defining and quantifying administrative burdens for businesses*", www.administratievelasten.nl.

5 See www.administratievelasten.nl/

6 See www.amvab.dk

administrative burdens. By comparing national systems, the most efficient ways of implementing European rules can then be identified. Measuring administrative burdens can also offer interesting options for simplifying European rules. Denmark, the Netherlands, Sweden and Norway have completed a first international benchmark exercise on VAT in 2005 regarding administrative burdens. The benchmark focused on a selection of EU VAT legislation and on how it is implemented at national level and how much administrative burdens it represents. The OECD also launched benchmarking project in 2006 which will analyses international transport legislation across a number of OECD countries.

In the European Union, the Commission is considering an EU common methodology for assessing administrative costs imposed by legislation, see EC (2005c). The method proposed is called "EU Net Administrative Cost Model". Like the SCM, it is a "micro assessment methodology" and allows distinguishing between national, EU and international origins. It has been adapted, as it encompasses burdens on enterprises, public authorities and citizens. It also considers the net costs as well as the one-off costs.

The measurement of the size of existing burdens can be an important information-based approach to developing a policy on burden reduction and the basis for the evaluation of policy initiatives taken. Quantitative evidence on the size of the burden had raised awareness amongst politicians and sustained a political constituency to maintain initiatives and policies on burden reduction. Measurable burden reduction goals furthermore strengthen the accountability of reformers.

Regulatory Transparency

The concept of transparency in government has rapidly become a central theme in governance literature and in public debate. Transparency is also a central demand of civil society groups and serves the basic democratic value of openness. The notion of transparency embodies the familiar concept of public consultation, but is considerably broader in scope. These concepts of transparency range from simple notification to the public that regulatory decisions have been taken, to controls on administrative discretion and corruption, better organisation of the legal system through codification and central registration, the use of public consultation and regulatory impact analysis and actively participatory approaches to decision-making.

Transparency's importance to the regulatory policy agenda springs from the fact that it can address many of the causes of regulatory failures, such as regulatory capture and bias toward concentrated benefits, inadequate information in the public sector, rigidity, market uncertainty and inability to understand policy risk, and lack of accountability. Transparency of the regulatory policy itself, as well as its institutions, tools and process is equally important for its success. Transparency encourages the development of better policy options, and helps reduce the incidence and impact of arbitrary decisions in regulatory implementation. Transparency is also rightfully considered to be the sharpest sword in the war against corruption.

Public Consultation

Public consultation is one of the key regulatory tools employed to improve transparency, efficiency and effectiveness of regulation. Consultation improves the quality of rules and programmes and also improves compliance and reduces enforcement costs for both governments and citizens subject to rules. Public consultation increases the information available to governments on which policy decisions can be based. The use of other policy tools, particularly RIA, and the weighing of alternative policy tools, has meant that consultation has been increasingly needed for collecting

empirical information for analytical purposes, measuring expectations and identifying non-evident policy alternatives when taking a policy decision.

OECD countries have developed five basic instruments or different forms to perform public consultation.

Informal consultation includes all forms of discretionary, ad hoc, and non-standardised contacts between regulators and interest groups. The key purpose is to collect information from interested parties. Informal consultation is carried out in virtually all OECD countries, but its acceptability varies tremendously. In the United Kingdom, regulatory bodies have traditionally had close and informal contacts with major interests, particularly businesses, and informal consultation is seen as a norm of the regulatory process, prior to formal consultation in line with the code of practice on written consultation. The same tradition of informal contacts exists in France. In Japan, informal consultation is crucial in shaping consensus around the final product. In Canada, the government has encouraged regulators to consult informally prior to formal consultation. By contrast, informal consultation is viewed more suspiciously in the United States as a violation of norms of openness and equal access, and in many cases it is a violation of the administrative procedure act requiring equal access for all interested parties.

Informal consultations can be less cumbersome and more flexible than more standardised forms of consultation; hence, they can have important advantages in terms of speed and the participation of a wider range of interests. The disadvantage of informal procedures is their limited transparency and accountability. Access by interest groups to informal consultations is entirely at the regulator's discretion. Informal consultation resembles "lobbying", but in informal consultation it is the regulatory agency that plays the active role in establishing the contact. The line between these two activities, however, is potentially difficult to draw.

The ***circulation of regulatory proposals*** for public comment is a relatively inexpensive way to solicit views from the public and it is likely to induce affected parties to provide information. Furthermore, it is fairly flexible in terms of the timing, scope and form of responses. It is among the most widely used form of consultation. This procedure differs from informal consultation in that the circulation process is generally more systematic, structured, and routine, and may have some basis in law, policy statements or instructions. It can be used at all stages of the regulatory process – but is usually used to present concrete regulatory proposals for consultation. Responses are usually in written form, but regulators may also accept oral statements, and may supplement those by inviting interested groups to hearings. The negative side of this procedure is again the discretion of the regulator deciding who will be included in the consultation. Important groups will not usually be neglected, as this is likely to create difficulties for the regulatory proposal when it reaches the cabinet or parliament. However, less organised groups are in weaker positions in this respect.

Public notice-and-comment is more open and inclusive than the circulation-for-comment process, and it is usually structured and formal. Notice-and-comment has a long history in some OECD countries, and its use has become much more widespread in recent years. It was first adopted for lower-level regulations in the United States in 1946. The practice was subsequently adopted in Canada in 1986 – called "pre-publication" – and in Portugal in 1991. By 1998, 19 OECD countries were using public notice-and-comment at least in some situations. Japan adopted notice-and-comment requirements for all new regulatory proposals (and revisions to existing rules) in April 1999. In other countries such as Hungary, the process is proceeding on an ad hoc basis, with individual Ministries deciding their own policies.

Procedures vary widely. In the United States and Portugal, the procedure is prescribed by law and judicially reviewed, while Canada has adopted the procedure through a policy directive that has no legal force. The United States model is the most procedurally rigid: comments are registered in a formal record of the rule-making and regulators are not permitted to rely on factual information which is not contained in this public record. United States' policymakers may accept or reject comments at their discretion, but those who ignore major comments risk having the regulation overturned in court. In Denmark, by contrast, notice-and-comment arrangements are also widely used in the preparation of "substantially important" lower level rules, but there is no standardised, formal, and systematic set of requirements.

The public notice element implies all interested parties have the opportunity to become aware of the regulatory proposal and are thus able to comment. There is usually a standard set of background information, including a draft of the regulatory proposal, discussion of policy objectives and the problem being addressed and, often an impact assessment of the proposal and, perhaps, of alternative solutions. This information – and particularly the RIA elements – can greatly increase the ability of the general public to participate effectively in the process, although most countries find that participation remains at a quite low level for all but a few controversial proposals. Many countries have found that levels of participation have in practice been low. This can be particularly so when the mechanism is first introduced, because familiarity is lacking. Established groups may prefer to keep their special relations with government officials than to participate in more open processes. Participation is also dependent on the ease of response and the expected results of participation, including the effectiveness of the notice process, the amount of time allowed for comment, the quality and nature of the information provided to interested parties and the attitudes and responsiveness of regulators in their interactions with participants in the comment process.

A ***public hearing*** is a meeting on a particular regulatory proposal at which interested parties and groups can comment in person. A hearing is seldom an independent procedure; rather, it usually supplements other consultation procedures. According to preliminary results from the most recent OECD survey on regulatory quality indicators, 13 OECD countries used public meetings as a form of consultation by 2005, but there were significant differences in their use vis-à-vis procedures and other aspects of the consultation process. In the United States a hearing is attached to the notice-and-comment procedure as needed. Hearings tend to be formal in character, with limited opportunity for dialogue or debate among participants. Experimentation with "online" hearings has begun. In Germany, a regulatory agency circulating a proposal for comment may arrange a hearing instead of inviting written comments, or may do both. In Finland, where hearings are a relatively new approach, a hearing is usually arranged instead of, or combined with, the invitation of written comments. In Canada, hearings are a formal part of the development of all primary regulatory law – conducted by committees in Parliament. Regulatory departments also often hold public consultation meetings, particularly on major regulatory or secondary legislation proposals.

Hearings are usually discretionary and ad hoc unless connected to other consultation processes (for example, notice-and-comment). Public meetings provide face-to-face contact in which dialogue can take place between regulators and wide range of affected parties and between interest groups themselves. A key disadvantage is that they are likely to be a single event, which might be inaccessible to some interest groups, and thus require more co-ordination and planning to ensure sufficient access. In addition, the simultaneous presence of many groups and individuals with widely differing views can render a discussion of particularly complex or emotional issues impossible, limiting the ability of this strategy to generate empirical information.

The use of ***advisory bodies*** is the most widespread approach to public consultation among the OECD countries. Some 21 countries use advisory bodies in some form during the regulatory process.

Their relationships to regulatory bodies can vary from reacting to a regulator's proposals (such as the Netherlands' Social and Economic Council, or Germany's expert advisory commissions) to acting as a rule-making body, in which advice is only one of several regulatory functions (such as the United Kingdoms' Health and Safety Commission). Advisory bodies may themselves carry out extensive consultation processes involving hearings or other methods. For example, in Germany, the mandate of the Deregulation Commission stated that it "may hear experts from research institutions, the business community and associations, and administration if it deems this necessary". In Mexico, businesses and other interested parties now participate in an advisory committee to the Federal Regulatory Improvement Council (COFEMER), through a dozen or more ad hoc consultation groups organised to review existing formalities and new regulations. Korea, too, has greatly expanded its use of consultative committees in recent years. This has coincided with a massive rise in the number of non-governmental organisations (NGOs), and hence the diversity of views to be incorporated into policy decisions. Committees are generally used as means of improving regulatory quality by assuring the flow of expert advice and information to regulators, but are also important in increasing the perceived legitimacy of laws.

Advisory bodies are involved at all stages of the regulatory process, but are most commonly used early in the process in order to assist in defining positions and options. Depending on their status, authority, and position in the decision process, they can give participating parties great influence on final decisions, or they can be one of many information sources. Regulatory development – drafting and reviewing proposals, or evaluating existing regulations – is rarely the only, or even the primary, task of advisory bodies. Some permanent bodies, for instance, may have broad mandates related to policy planning in areas such as social welfare or health care. There are many different types of advisory bodies under many titles – councils, committees, commissions, and working parties. Their common features are that they have a defined mandate or task within the regulatory process (either providing expertise or seeking consensus) and that they include members from outside the government administration.

Further problems and challenges have also been detected. In both the UK and Canada the OECD found, extensive consultations appear to have resulted in "consultation fatigue" by interest groups that feel overwhelmed by the volume of materials on which views are requested. Consultation fatigue may be a positive signal and stems from success in developing highly consultative and transparent regulatory regimes. Alternatively, it may arise from weaknesses in the mechanisms for responding to consultation inputs and eventually erode trust in the process.

Regulatory institutions

The role of institutions has been largely neglected in public policy discussion until recent times, but it is now receiving considerable attention. While regulatory policy needs to focus to a large extent on designing and applying high quality regulatory instruments, without the right set of institutions to ensure regulatory implementation, the regulatory instrument will be useless. The institutions required to take forward the regulatory policy agenda are numerous and of many kinds. But at the core, they include regulatory oversight bodies and independent regulators.[7]

[7] The executive and legislative branch are also key institution in the regulatory policy process. The executive is a key source of regulation in two ways: in terms of proposing new laws to parliament, and in terms of establishing secondary rules to give effect to primary legislation. Parliaments have a formal responsibility to review and enact primary legislation, which is why it is important they are closely integrated into regulatory quality systems and processes. Parliament's approach to scrutinising

Central oversight bodies

Most OECD countries however have integrated oversight bodies dealing with regulatory issues into the administration. Oversight bodies are an essential regulatory institution, which enhances quality in regulatory processes and their reforms. Their mission is to supervise, co-ordinate, challenge and advice regulators while promoting reform, regulatory quality and its benefits. These institutions should have the capacity to co-ordinate, maintain a whole-of-government perspective and a broad concept of reform, holding sufficient authority and preferably benefit from a permanent mandate.

Effective and credible mechanisms inside the government for managing regulation are indispensable for reform. OECD evidence shows that a well-organised and monitored process, driven by "engines of reform" with clear accountability for results, is important for the success of the regulatory quality policy. While in 1996 only 14 OECD countries had set up a dedicated body (or bodies) responsible for promoting the regulatory policy and monitoring and reporting on regulatory reform and regulatory quality in the national administration from a whole of government perspective, 23 countries had one in 2005 (OECD 2005). These institutions have brought important improvements for the regulatory systems and the reform processes.

In OECD countries, there is a wide range of institutional bodies that function successfully. The most remarkable aspect of the use of oversight bodies is their variety in roles and structures. Most are located within administrations, although advisory commissions, regulatory reform committees of Cabinet, parliamentary committees and intergovernmental committees are also relatively widespread.

A key role of oversight bodies is to coordinate and supervise, making certain that regulatory reform meets quality standards, complies with a general economic strategy and that RIA is undertaken appropriately. In that sense, channels of communication between regulators and bodies must be properly settled. Furthermore, the level of government from which the body coordinates is important, as well as the used tools. In Korea a Regulatory Reform Committee has been set up by law with a "general mandate to develop and co-ordinate regulatory policy and to review and approve regulations." The Prime Minister, a significant group of experts and six Ministers participate in this body. In Denmark a Regulation Committee was established to oversee and manage the overall legislative programme and to make sure the impacts of regulation were properly assessed. It is another example of inter-ministerial coordination since the Prime Minister's Office and the Ministries of Finance, Justice, Economic Affairs and Trade and Industry are involved.

The challenge function empowers the oversight institution with the competence of questioning regulation and its reforms by assessing quality of regulatory policy through RIA and the gatekeeper function. This implies that the capacity to veto a regulation which does not fulfil the requirements of quality, giving the oversight body considerable power. This feature has not reached all institutions and it is still pending in many OECD countries. Australia's Office of Regulatory Review ORR vets and reviews draft regulations to ensure that they are properly formulated and that they include assessments of, among others, administrative costs for government, business and other affected parties.

Advocacy means to take especial consideration to maintaining the right path for the long term strategy. Oversight bodies can be very useful in the promotion of regulatory reform and quality. In the United Kingdom, the Better Regulation Commission plays a continuous advocacy role of reform throughout the regulatory institutions. In Japan, the Administrative Evaluation Bureau promotes the

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legislation should be clearly aligned with the regulatory quality procedures adopted in the executive – they should be mutually reinforcing.

appropriate implementation of policy assessments by regulators, and coordinates and publishes reports on the progress of the implementation of policy evaluations.

The main features of oversight bodies that contribute to regulatory quality can be summarised in the following points: the capacity of co-ordination of institutional frameworks from a whole-of-government perspective, independence and sufficient authority, political support at a high political level, and integration into a broad concept of reform.

From an administrative perspective, most countries believe that strong oversight bodies at the centre of government are essential to progress. In many OECD countries, oversight bodies have been placed at the centre of government - sometimes at the same level of ministries and regulatory agencies – supervised by the President of Prime Minister's or directly linked to a budgetary agency. One of the pioneer bodies responsible for assessing regulatory quality was established in the United States, the Office of Information and Regulatory Affairs (OIRA) under the Office of Management and Budget Executive Office of the President. In the United Kingdom the Better Regulation Executive (BRE), within the Cabinet Office, has overall responsibility for the Government's regulatory policy. In Mexico, the COFEMER, under the Ministry of Economy plays the role of an oversight body ensuring regulatory quality.

Other countries, often smaller and consensus-based, have chosen to set up more decentralised institutions. Denmark is relatively more informal, consensual, and decentralised in its structures and the Regulation Committee coordinates ministerial institutions and ensures that they accurately identify policy problems, assess impacts and consider alternatives to "command and control" regulation. In Norway and Switzerland, there is no central unit responsible for managing and co-ordinating regulation and its reform.

However, lack of a central regulatory oversight body does not imply the absence of co-ordination on regulatory policy issues. Instead, it can be a result of the relatively decentralised model of government administration. Mixed institutional arrangements for oversight bodies are also possible, combining the different responsibilities of supervising, advising, challenging and co-ordinating and creating a network of bodies operating at different levels of government. When responsibilities are spread over different institutions, coordination mechanisms are needed. The institutional framework of Canada tries to strengthen the oversight activities by creating a complex but well structured framework. First, there is a group of bodies depending directly from executive authorities - The Special Committee of Council (SCC), the Regulatory Affairs and Orders in Council Secretariat (RAOICS) and the Treasury Board Secretariat. At the Departmental (Ministerial) level, the Department of Justice supervises overall internal regulation quality and agencies within Departments perform internal reviews of regulatory agendas and the drafting and quality control through RIAs of regulations.

Oversight bodies with a permanent mandate are more numerous among OECD countries and indicate a greater commitment with reforms in the long term. A permanent mandate contributes to maintain more independence, since limited mandates could make them more vulnerable to political cycles. In Mexico, COFEMER was established by Federal Law on Administrative Procedures, functioning with technical and operating autonomy and an indefinite period of mandate.

A broad concept of reform is advisable, as well as a strategic perspective of the regulatory policies and their reforms. The Regulatory Process Action Plan sets out in Canada a structure and tools for regulatory reform, and a network of central and departmental oversight bodies is one of the key elements. Their work is based on the strategy framework established by the *Guiding Principles of Federal Regulatory Policy* and the *Citizen's Code of Regulatory Fairness*. In the Netherlands, the

Prime Minister develops economic and legal standard principles which must be applied by all Ministries and institutions involved in drafting regulation.

Without an overarching strategy, oversight bodies may act on a case-by-case basis, facing problems of coherence, consistency, and some short-reaching policies. It is therefore advisable that they establish a strategy to build up constituency for their work, integrating different voices of the political, economic and social landscape.

OECD experience shows that the institutional design of oversight bodies should reflect the legal, economic, social and cultural characteristics of each country, taking into account how the regulation affects the system. There is no unique model and structure of institutions dealing with regulatory quality. The path to building a well functioning oversight body has not a single straight line. Oversight bodies should have an incremental approach in tasks, and should be constantly developing capacities and skills of human resources.

Independent regulators[8]

One of the key institutions of regulatory policy is the independent regulator. Many OECD countries have now moved towards independent regulators, establishing separate "agencies" at arm's length from the political system, with delegated powers to implement specific policies in a number of sectors of the economy. They are found primarily in utility sectors with network characteristics such as energy and telecoms, and in other sectors where sector-specific prudential oversight is needed, such as financial services.

The reasons for setting up independent regulator are well known.[9] The key benefit sought from an institutional framework based around these agencies is to shield market interventions from interference from political and private interests. The move to establish independent regulators offers great potential in improving regulatory efficiency. Independent regulators are also a necessary institutional development for marking out the separation of the State's roles as policy maker and owner of productive assets. This is a role which is especially important in countries which have chosen to maintain a significant ownership interests in network industries.

OECD (2002a) notes that they have been most effective and credible, where their independence and roles are based on a distinct statute with well defined functions and objectives. They also require an adequate resource base and a flexible staffing policy that allows the body to attract and keep competent staff.

At the same time, independent regulators represent a significant challenge to the executive and parliamentary powers of government. They represent a special form of institution in most OECD countries, which is neither directly elected by citizens nor managed by elected officials. It is an institution that governments have established to delegate authority at arms' length from elected public authorities. Independent regulators exist at the border between policy formulation, which remains the

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8 The following section draws extensively from OECD (2005b), and OECD (2003b), *Independent Regulators, Political Challenges And Institutional Design*.

9 There is a rich body of theoretical and empirical research covering independent regulators in network industries. For recent reviews see Laffont and Tirole (1993, 2000); Levy and Spiller (1994) and Newbery (1999).

remit of the elected public authorities under a rule of law, and enforcement of the regulation which is delegated to them.

Defining the respective roles of the regulators and the executive raises a number of political and institutional consideration, in particular how the exercise of regulatory power is to be controlled. The increasing role of independent regulators has raised concerns in certain countries; that they could result in "governments in miniature," blurring the traditional separation of powers, see OECD (2002a). At the same time, independent regulators can never be fully independent from the political process. They will always operate under the authority of laws and governance structures that can be altered by directly by the legislature and courts as well as indirectly by the executive. Thus, effective regulators have to be able to respond to the long-term political direction which justify will ultimately justify their continuing existence.

The framework based around an independent regulatory is also subject to a number of shortcomings. Perhaps the most cited is regulatory capture, see Laffont and Tirole (1988). OECD (2002a) identifies several additional risks associated with independent regulators could reduce longer--term regulatory quality in infrastructure sectors. Independent regulators may slow structural change, losing potential gains to consumers. Regulators are often established on sectoral lines and may tend to obstruct convergence between sectors and the emergence of new business models.

Independent regulators may contribute to the fragmentation of governmental policies and actions, in particular in the case of competition policy. A number of network sectors have restructured rapidly, driven by technological innovation, thus becoming competitive. As a result, sector-specific issues have become less important *vis-à-vis* general competition issues. But inertia and resistance from sector-specific regulators could well impede transfers of power to the competition authority.

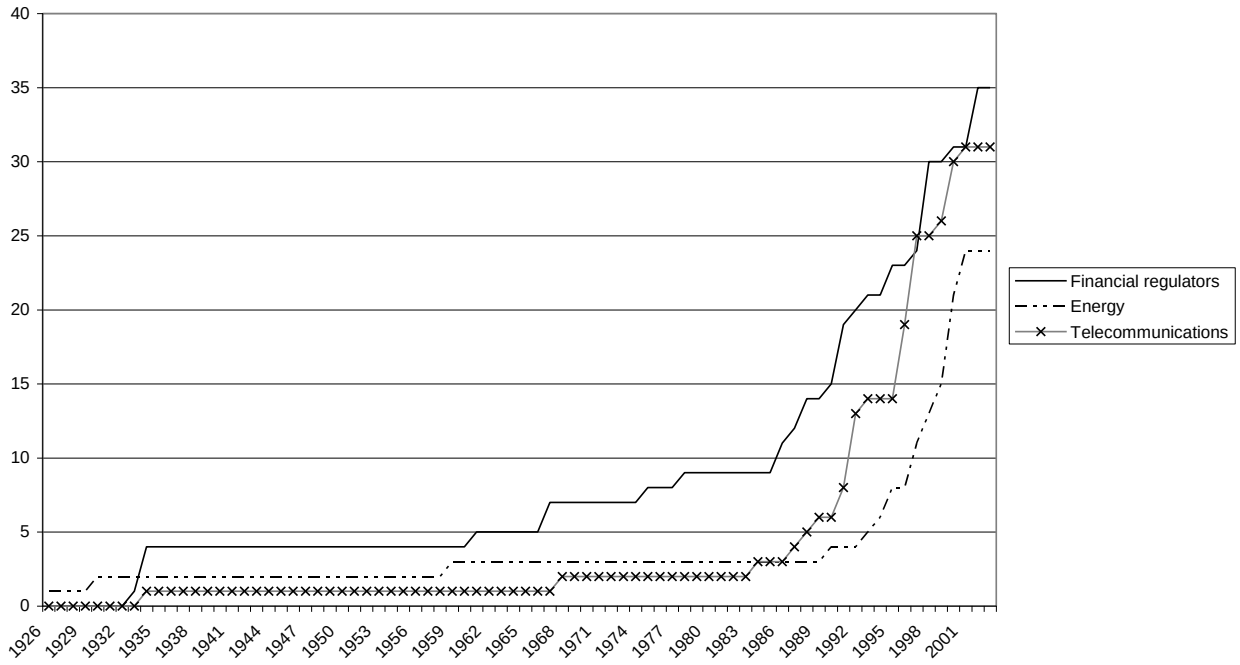
Many of these risks can be minimised by careful regulatory design. However, in many OECD countries, the roles of the regulatory authorities have not been clearly defined and accountability mechanisms could be improved.

Independent regulatory is OECD countries[10]

The use of independent regulatory agencies dates back to boards and other regulatory commissions that have been part of the regulatory framework in the United States in Canada since the 1920s. However, the widespread privatisations of the 1980s and 1990s have seen much greater use of institutions of this type in a wide range of OECD countries.

[10] The data on independent regulatory agencies was collected by OECD in 2003-04 based on published and web-based sources, see OECD (2005b: 76-87)

Chart 1. Trends in independent regulatory Authorities in OECD Countries



Regulatory agencies operating at arms' length from the government encompass a wide range of institutional settings. They can be classified in four distinct groups. First, ***ministerial departments*** are agencies that are part of the central government and do not have the status of a separate corporate body. They are part of the civil service and headed by or report directly to a minister. They are typically and largely funded from tax revenue. They can have statutory independence in carrying out some regulatory functions, and can have considerable administrative autonomy from other ministries.

Second, ***ministerial agencies*** are executive agencies, set at arm's length from central government, which may or may not have a separate budget and autonomous management. They may be subject to different legal frameworks (where administrative procedures laws or civil service regulations may not apply). They may have a range of powers, but are ultimately subordinate to a ministry and subject to ministerial intervention.

Third, ***independent advisory bodies*** are agencies with the power to provide official and expert advice to government, lawmakers, and firms on specific regulations and aspects of the industry. They may also have the power to publish its recommendations. The scope for public decisions to depart from this advice or recommendations may vary.

Finally, ***independent regulatory authorities*** are agencies charged with the regulating specific aspects of an industry. They are typically under autonomous management, and their budget may be under a Ministry. However, there is no scope for political or ministerial intervention with the body's activities, or intervention is limited to providing advice on general policy matters rather than specific cases. These bodies have a varying range of powers. As indicated in Charts 2 and 3, independent regulatory authorities account for approximately two thirds of regulatory agencies operating at arms' length from the government

Chart 2. Institutional status of regulators (by sector)

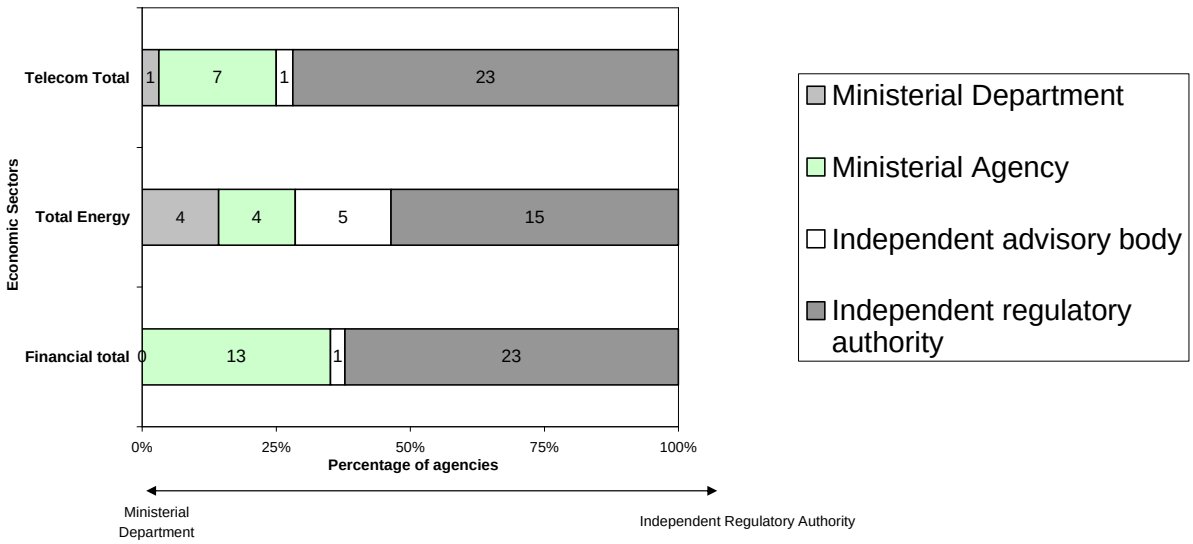
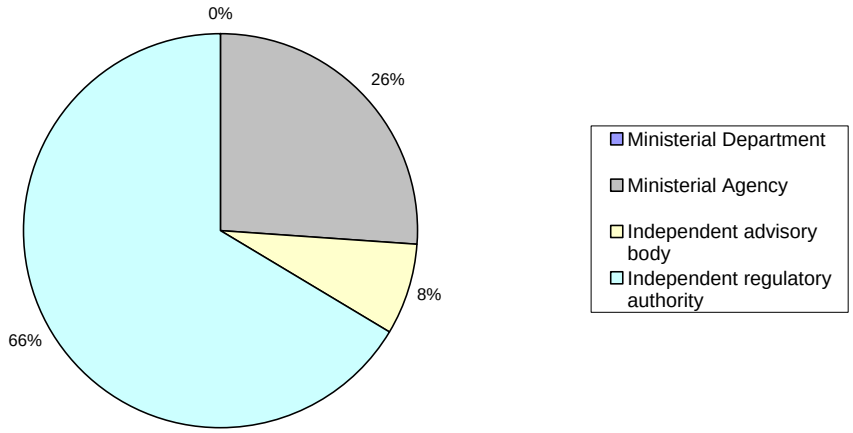


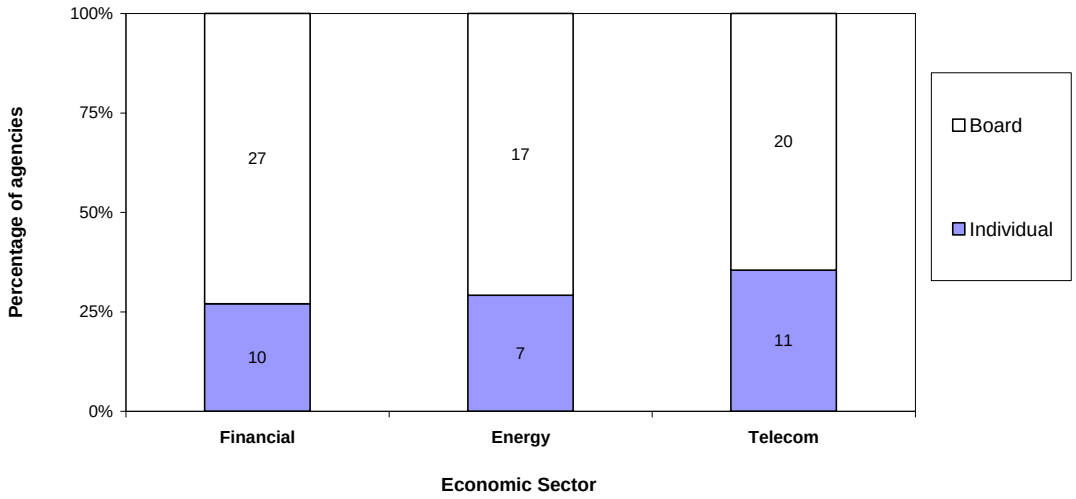
Chart 3. Institutional status of independent regulators in OECD member countries (97 agencies)



Creating independence between the regulator and the government raises a number of practical design issues. Key aspects to ensure independence are the governance structure of the agencies, the transparency of procedures and guarantees for due process, the selection and nomination process, and the financing of the agency. The experience of OECD countries offers a wide range of alternatives in terms of institutional design to ensure regulatory independence.

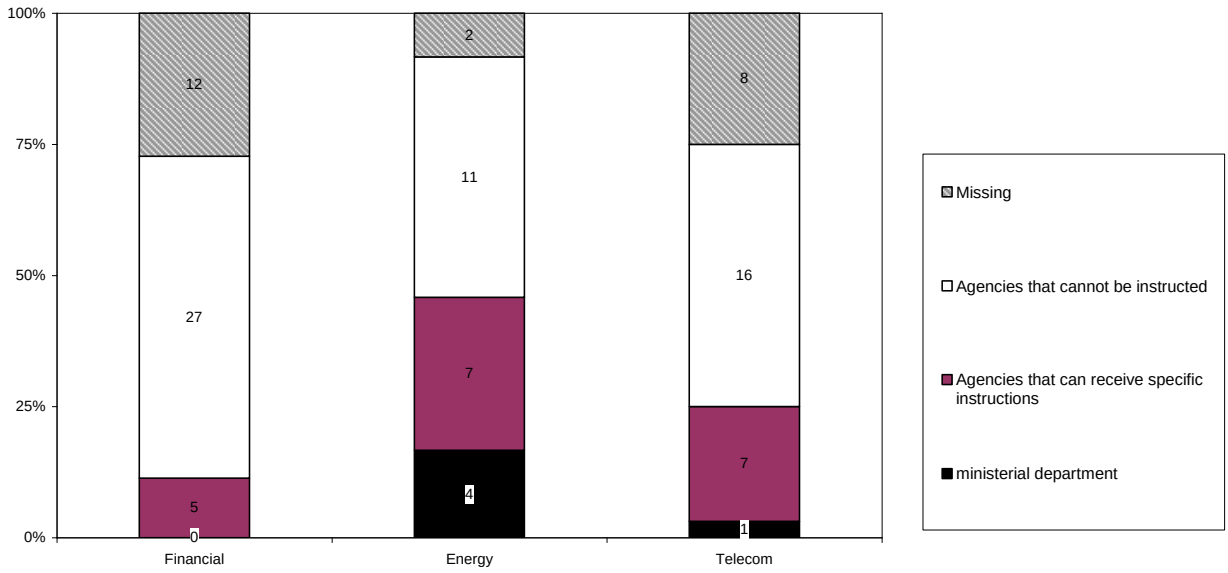
The governance structures independent regulatory agencies are an important consideration to ensure accountability. In theory, a board should offer more opportunities for collegial decision making, thus ensuring a greater level of independence and integrity in decision making. More than two thirds of the independent regulatory authorities included in the current inventory are governed by a board, with a slightly higher proportion for financial regulators.

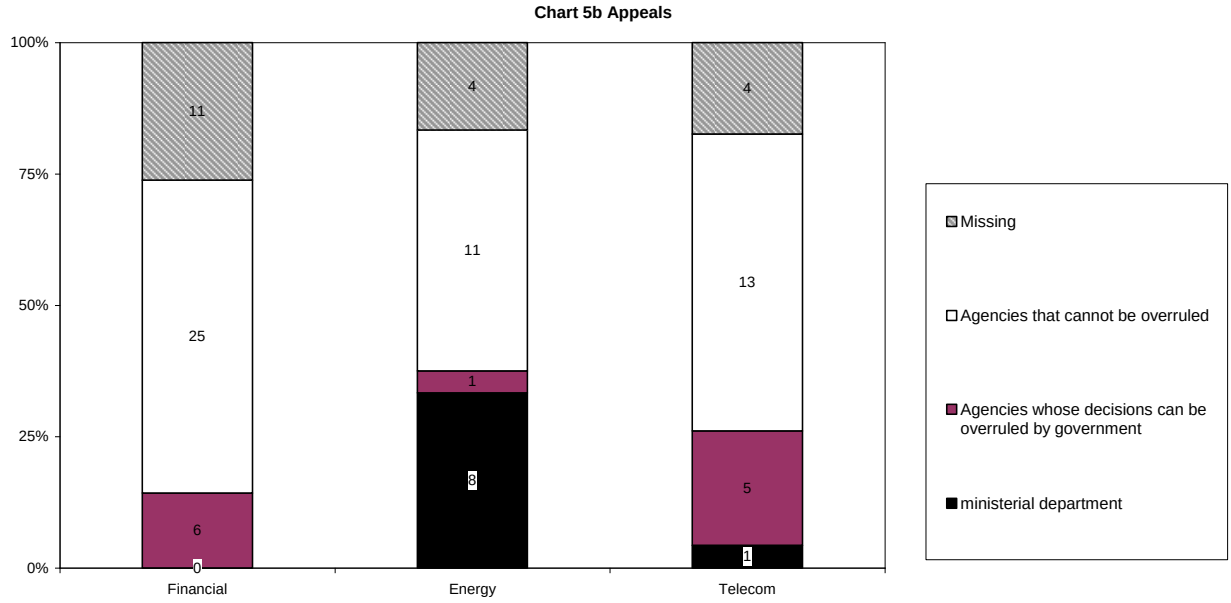
Chart 4. Governance structure of regulators



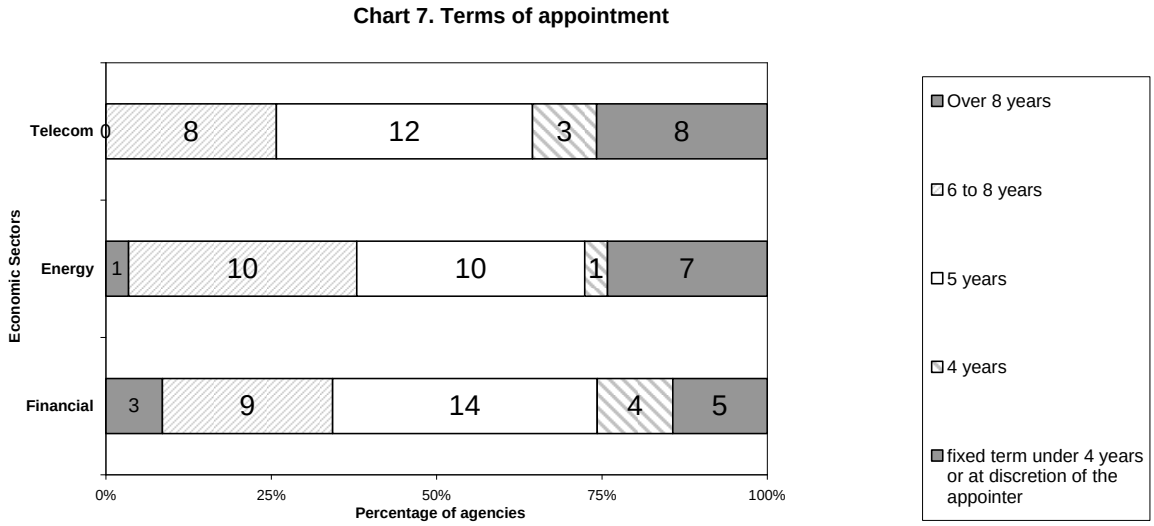
Even when independent regulators have been granted some powers and some autonomy, their independence can often be subordinated by administrative regulations. This can be reflected in the provision of instructions to these agencies, or in the possibility of lodging ministerial appeals after decisions have been made. These interventions have the potential to reduce the effective independence of the agency. Chart 5a and 5b display the proportion of agencies that can receive instructions, and those agencies for which decisions can be appealed to the Minister.

Chart5.a Instructions



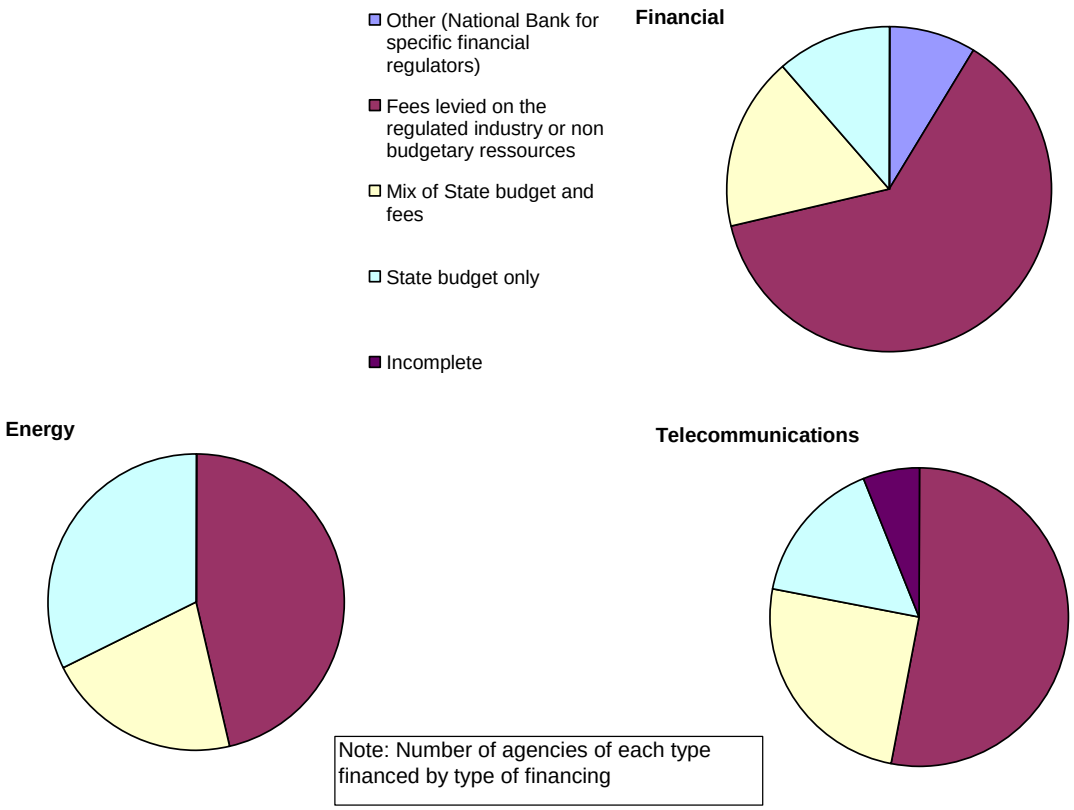


The terms of appointment can have considerable influence the level of independence of regulatory agencies. In general, longer appointments that span political cycles ensure the greatest degree of independence.



Finally, an important practical issue is also to ensure that independent regulators receive sufficient financial resources to carry out their mandate and that the funding mechanisms will not impact on their independence. Several arrangements have been used in OECD countries including directly levying fees from the regulated entities, to central funding from the state budget. Funding is often constrained by the nature of the agency and the possibility of levying sufficient fees from the sector being regulated. It may also be influenced by the need to reduce the risk of capture.

Chart 8. Financial ressources



Conclusion

This paper has reviewed development of regulatory policy in OECD countries over the last quarter century. It has identified a range of tools and institutions that have been used by OECD countries to develop high-quality regulation. The analysis has attempted to show that there is considerable commonality on broad objectives of regulatory policy, considerably diversity remains in the implementation of regulatory policy across OECD countries.

OECD (2002: 112-9) identifies a number of key issues for extending and deepening the regulatory policy agenda. An overarching challenge is linking regulatory policy to the broader governance agenda. Strengthening the links between regulatory policy and a number of other structural reforms - such as competition policy, market openness, and labour and product markets - will be necessary if the benefits of the regulatory policy agenda are to be fully realised. Broadening the application of regulatory policies will also be important in this regard. A number of important agents – sub-national governments, independent agencies, international and inter-governmental bodies and legislatures – need to be more fully engaged in developing and implementing the regulatory policy agenda. A key task for OECD countries is to enhance the evaluation capacities of their regulatory policies, tools and institutions. The lack of an evidenced based decision making is fundamental impediment to the creation of high quality regulation. Particularly important in this

regard is ex post policy review and evaluation which is generally under-emphasised by OECD governments. Finally, understanding of the most effective institutional basis for driving a regulatory policy agenda remains limited. This report has discussed the responsibilities of institutions such as oversight bodies, advisory committees and independent regulators. For none of these institutions is there a clearly defined set of best practices.

Finally, a relatively new and emerging challenge is in the area of risk and regulatory policy. Many OECD governments have come to recognise the critical importance of and the need for an effective risk policy. Public servants deal regularly with risks in many public policy domains – economic, financial, health, safety, environmental and national security. With increasing frequency, officials face decisions about regulations where future uncertainties are economically significant and unavoidable. Thus, OECD governments need to assess and manage risk - as well as inform the public about the nature of risks and it inherent tradeoffs - in an overall effort to develop suitable regulatory policy.

REFERENCES

Aghion, P., Harris, C., Howitt, P., and Vickers, J. (2001), 'Competition, Imitation and Growth with Step-by-Step Innovation', *The Review of Economic Studies*, **68**(3), 467-92.

Alesina A., Ardagna S., Nicoletti G., Schiantarelli F. (2003), 'Regulation and investment', *OECD Economics Department Working Paper*, **352**.

Baker, J. B. (2003), 'The Case for Antitrust Enforcement', *Journal of Economic Perspectives*, **17**(4), 27-50.

Baumol, W. J. (1990), 'Entrepreneurship: Productive, Unproductive, and Destructive', *Journal of Political Economy*, **98**(5), 893-921.

Blanchard, O. and Giavazzi, F. (2003), Macroeconomic Effects of Regulation and Deregulation in Goods and Labour Markets, *Quarterly Journal of Economics*, 118(3), 879-907.

Boeri, T., Nicoletti, G. and Scarpetta, S. (2000), 'Regulation and Labour Market Performance', *CEPR Discussion Paper* **2420**.

Canada (2001), *Regulatory Reform through Regulatory Impact Analysis: The Canadian Experience*, Treasury Board of Canada, www.tbs-sct.gc.ca/pubs_pol/dcgpubs/manbetseries/VOL14-1_e.asp#Top.

Christiainsen G., and Havenman, R. (1981), 'Public regulations and the slowdown in productivity growth', *American Economic Review*, **71,** 320-325.

Crandall, R. W. and Winston, C. (2003), 'Does Antitrust Policy Improve Consumer Welfare? Assessing the Evidence', *Journal of Economic Perspectives*, **17** (4), 3–26

Danish Ministry of Economic and Business Affairs (2003), *International Study: Efforts to Reduce Administrative Burdens and Improve Business Regulation*.

Dee, P., Hanslow, K., Phamduc, T. (2003), 'Measuring the Cost Of Barriers To Trade In Services, in t. Ito and A. Krueger (Eds.), *Trade In Services In The Asia-Pacific Region, NBER-East Asia Seminar On Economics*, Chicago , University Of Chicago Press.

Djankov, S., McLiesh, C. and Ramalho, R. (2006), 'Regulation and Growth', World Bank Working Paper, available at ssrn.com/abstract=893321.

EC (2002), *Action Plan "Simplifying and improving the regulatory environment"*, Brussels, Communication from the Commission.

EC (2005a), *Better Regulation for Growth and Jobs in the European Union*, Brussels, Communication from the Commission.

EC (2005b), *Implementing the Community Lisbon programme: A strategy for the simplification of the regulatory environment*, Brussels, Communication from the Commission.

EC (2005c), *On an EU common methodology for assessing administrative costs imposed by legislation*, Brussels, Communication from the Commission.

Formsma, S. (1997), 'Assessment of Draft Legislation in the Netherlands', *Improving the Quality of Legislation in Europe*, The Hague, Kluwer Law International.

Gust, C. and Marquez, J. (2002), 'International Comparisons of Productivity Growth: The Role of Information Technology And Regulatory Practices', *Board of Governors of the Federal Reserve System, International Finance Discussion Papers*, **727**.

Hall, R. E. and Jones, C. I. (1999), 'Why Do Some Countries Produce So Much More Output per Worker than Others?', *Quarterly Journal of Economics*, **114**(1), 83-116.

Horwitz, R. B. (1989), *The Irony of Regulatory Reform: The Deregulation of American Telecommunications*, New York, Oxford University Press.

Kaufmann, D., Kraay, A., and Mastruzzi, M. (2005), 'Governance Matters IV, Governance Indicators for 1996-2004', *World Bank Policy Working Paper*, available at www.worldbank.org/wbi/governance/pubs/govmatters4.html

Laffont, J.-J. and Tirole, J. (1991), 'The Politics of Government Decision-Making: A Theory of Regulatory Capture," *The Quarterly Journal of Economics*, **106**(4), 1089-127.

Laffont, J.-J. and Tirole, J. (1993) *A Theory of Incentives in Procurement and Regulation*, Cambridge, MIT Press.

Laffont, J.-J. and Tirole, J. (2000) *Competition in Telecommunications*, Cambridge, MIT Press.

Levy, B. and Spiller, P.T. (1994) 'The Institutional Foundations of Regulatory Commitment: A Comparative Analysis of Telecommunications Regulation', *Journal of Law, Economics and Organization*, **10**(2), 201-46.

Messina, J., (2003), 'The Role of Product Market Regulations in the Process of Structural Change', *ECB Working Paper Series*, **217**.

Nicoletti G., Bassanini A., Ernst E., Jean S., Santiago P., and Swaim, P (2001), 'Product and Labour Markets Interactions in OECD Countries', *OECD Economics Department Working Paper*, **312**.

Newbery, D. (1999), *Privatization, Restructuring and Regulation of Network Industries*, Cambridge, MIT Press.

Nicoletti, G. and Scarpetta, S. (2003), 'Regulation, Productivity and Growth: OECD Evidence', *OECD Economics Department Working Papers*, **347**.

North, D. C. (1990), *Institutions, institutional change, and economic performance*, Cambridge, Cambridge University Press.

OECD (1997a), *OECD Report on Regulatory Reform*, Paris.

OECD (1997b), *Regulatory Impact Analysis: Best practices in OECD Countries*, Paris, OECD.

OECD (1997a), *OECD Report on Regulatory Reform*, Paris, OECD.

OECD (1999b), *Regulatory Reform in the Netherlands*, Paris, OECD.

OECD (1999c), *Regulatory Reform in Japan*, Paris, OECD.

OECD (1999d), *Regulatory Reform in Mexico*, Paris, OECD.

OECD (2000a), *Regulatory Reform in Hungary*, Paris, OECD.

OECD (2000b), *Regulatory Reform in Korea*, Paris, OECD.

OECD (2001a), *Regulatory Reform in Italy*, Paris, OECD.

OECD (2001b), *Regulatory Reform in the Czech Republic*, Paris, OECD.

OECD (2001c), *Regulatory Reform in Ireland*, Paris, OECD.

OECD (2001d) *Regulatory Reform in Greece*, Paris, OECD.

OECD (2002a), *Regulatory Policies in OECD Countries. From Interventionism to Regulatory Governance*, Paris.

OECD (2002b), *Government Capacity to Assure High Quality Regulation in Canada*, Background Report, Paris, OECD.

OECD (2002c), *Regulatory Reform in Canada – Maintaining Leadership through Innovation*, Paris, OECD.

OECD (2002d), *Government Capacity to Assure High Quality Regulation in the United Kingdom*, Background Report, Paris, OECD.

OECD (2002e), *Regulatory Reform in the United Kingdom – Challenges at the Cutting Edge*, Paris, OECD.

OECD (2002f), *Regulatory Reform in Turkey*, Paris, OECD.

OECD (2003a), *From Red Tape to Smart Tape, Administrative Simplification in OECD Countries*, Paris.

OECD (2003b), *Independent Regulators, Political Challenges and Institutional Design*, internal manuscript, Paris.

OECD (2004a), *Japan – Progress in Implementing Regulatory Reform, Paris*, OECD.

OECD (2004b), *Regulatory Reform in France – Charting a Clearer Way Forward*, Paris, OECD.

OECD (2004c), *Mexico - Progress in Implementing Regulatory Reform*, Paris, OECD.

OECD (2004d), *Regulatory Reform in Germany – Consolidating Economic and Social Renewal*, Paris, OECD.

OECD (2005a), *OECD Guiding Principles for Regulatory Quality and Performance*, Paris, OECD.

OECD (2005b), *Designing Independent and Accountable Regulatory Authorities For High Quality Regulation*, available at www.oecd.org/dataoecd/15/28/35028836.pdf, Paris.

Olson, M. (1982), 'A Political Theory of Regulation with Some Observations on Railway Abandonments', *Public Choice*, **39**(1), 107-11.

Olson, M. 1965. The logic of collective action. Cambridge, MA: Harvard University Press.

Peoples, J. (1998), 'Deregulation and the Labor Market', *The Journal of Economic Perspectives*, **12**(3). 111-30.

Posner, R. A. (1974), 'Theories of Economic Regulation', *Bell Journal of Economics and Management Science*, **5**(2), 335-58.

Weingast, B. R. (1995), 'The Economic Role of Political Institutions: Market-Preserving Federalism and Economic Development', *Journal of Law, Economics, & Organization*, **11**(1), 1-31.

World Bank (2004), *Doing Business in 2004, Understanding Regulation*, Washington.