

8. REGULATORY GOVERNANCE

Ex post evaluation of regulation

The evaluation of existing laws and regulations through *ex post* impact analysis is necessary to ensure that they are effective and efficient. In the absence of a systematic review process, the overall burden of complying with regulations tends to increase over time. This complicates the daily life of citizens and impedes the efficient functioning of business. *Ex post* evaluation can be the final stage of the regulatory policy cycle, evaluating the extent to which regulations met the goals they were designed for. It can also be the initial point to understand the impacts, shortcomings and advantages of a policy or regulation in place, and to provide feedback for the design of new regulations.

The practice of *ex post* evaluation has stagnated across OECD member countries (Figure 8.7). Still, only some 20 countries report having a mandatory requirement for *ex post* evaluation in 2014. Similarly, automatic evaluation requirement practices have not increased substantially since 2008/09. By contrast, sunseting (the automatic repeal of regulations a certain number of years after they have come into force) is an area where country practices are developing. Overall, however, very few OECD member countries have actually deployed *ex post* evaluation systematically. It is positive to note that some countries, such as the Czech Republic, have conducted an *ex post* evaluation exercise in the last three years although *ex post* evaluation is not mandatory. Yet there remain a few countries that have not conducted any *ex post* evaluation in the last three years despite being mandatory to do so.

The scope of existing requirements for *ex post* evaluation in OECD member countries seems to be quite limited (Table 8.8): requirements for periodic *ex post* evaluation, the use of sunseting and automatic evaluation requirements often only apply to some primary laws, i.e. they do not cover the entire body of regulations for which a systematic *ex post* evaluation process would be relevant.

When conducting *ex post* evaluations, only about half of OECD member countries report to include an assessment of the achievement of the goals of regulations and compare the actual vs. predicted regulatory impacts (Table 8.8). This demonstrates that the general understanding of *ex post* evaluation remains low among OECD member countries, as one of the main purposes of *ex post* evaluation is to measure the outcome of the regulation in relation to the initial policy objective. Instead, many OECD member countries that have conducted *ex post* evaluations in the past 12 years report their evaluations to have been based on administrative burdens and compliance cost calculations (e.g. Iceland and Israel), so the focus still lies on partial *ex post* assessment of regulatory burdens.

An evaluation of legal consistency is part of *ex post* evaluations in fewer OECD member countries. Seventeen countries require *ex post* evaluations to consider the consistency of regulations and take steps to address areas of overlap, duplication or inconsistency, and only about a third of OECD member countries require an assessment of the con-

sistency of regulations with comparable international standards and rules. A potential innovative form of *ex post* evaluation could involve cross-country comparisons of regulatory frameworks. This method to appraise the performance of the domestic regulatory environment consists of comparing regulations, regulatory processes and their outcomes across countries, regions or jurisdictions. For example, Australia and New Zealand carried out a cross-jurisdictional performance benchmarking of their business regulation for food safety in 2009.

Methodology and definitions

For 2014, the indicators draw upon country responses to the 2014 OECD Regulatory Indicators Survey for all OECD member countries and the European Commission. For previous years, the indicators draw upon country responses to the OECD Regulatory Management Systems' Indicators Survey conducted in 2005 and 2008 for the 30 OECD member countries and the European Commission, and in 2009 for the four countries that joined the OECD in 2010 (Chile, Estonia, Israel and Slovenia). Responses for all years were provided by delegates to the OECD Regulatory Policy Committee and central government officials.

Primary laws are regulations which must be approved by the legislature, while subordinate regulations can be approved by the head of government, by an individual minister or by the cabinet.

Further reading

OECD (forthcoming), *Regulatory Policy Outlook 2015*, OECD, Paris.

OECD (2012), "International Practices on *ex post* Evaluation", in *Evaluating Laws and Regulations: The Case of the Chilean Chamber of Deputies*, OECD, Paris, pp. 9-26, <http://dx.doi.org/10.1787/9789264176263-en>.

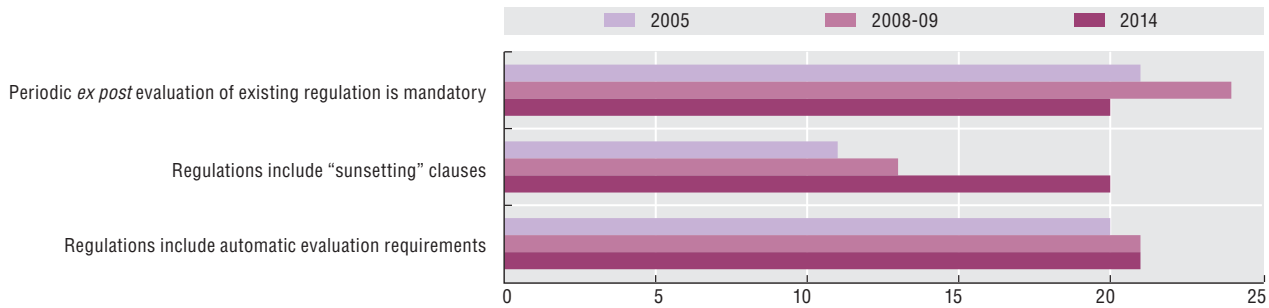
OECD (2012), *Recommendation of the Council on Regulatory Policy and Governance*, OECD, Paris, www.oecd.org/gov/regulatory-policy/2012-recommendation.htm.

Figure and table notes

8.5: Data for the question "Do regulations include automatic evaluation requirements?" refers to primary laws only for 2005 and for Chile, Estonia, Israel and Slovenia for 2008/09. Data for 2005 are not available for Chile, Estonia, Israel and Slovenia. Therefore, the figure is based on data for 30 OECD countries and the European Commission for 2005, and 34 OECD countries and the European Commission for 2008/09 and 2014.

Information on data for Israel: <http://dx.doi.org/10.1787/888932315602>.

8.7. Requirements for ex post evaluation of regulations, 2005, 2008-09 and 2014



Source: OECD Regulatory Management Systems' Indicators Survey 2005 and 2008/09, www.oecd.org/gov/regulatory-policy/measuring-regulatory-performance.htm; OECD (forthcoming), OECD Regulatory Policy Outlook 2015, based on the 2014 OECD Regulatory Indicators Survey results.

StatLink <http://dx.doi.org/10.1787/888933248963>

8.8. Requirements for and content of ex post evaluation, 2014

	Ex post evaluations of primary laws							
	Periodic ex post evaluation of existing primary laws is mandatory	Primary laws include "sunsetting" clauses	Primary laws include automatic evaluation requirements	Contain an assessment of the achievement of goals	Make comparisons of the actual vs predicted impacts	Identify unintended consequences	Require a consideration of consistency of regulations	Require an assessment of consistency with comparable international standards and rules
Australia	▲	◆	◆	□	△	□	□	◇
Austria	◆	●	■	□	□	□	○	○
Belgium	◆	◆	◆	◇	◇	□	◇	△
Canada	◆	◆	◆	◇	◇	◇	◇	◇
Chile	●	●	●	△	△	△	△	△
Czech Republic	●	◆	●	○	◇	◇	○	○
Denmark	■	◆	◆	□	◇	◇	◇	◇
Estonia	◆	●	◆	□	○	◇	◇	◇
Finland	●	◆	●	○	○	○	○	○
France	◆	◆	◆	○	○	○	○	○
Germany	▲	◆	▲	□	△	□	◇	◇
Greece	●	●	●	○	○	○	○	○
Hungary	■	●	■	○	□	□	○	◇
Iceland	●	◆	●	◇	○	○	○	○
Ireland	●	●	●	○	○	○	○	○
Israel	●	●	●	◇	○	□	□	□
Italy	■	●	●	□	○	□	□	○
Japan	■	●	■	○	□	○	□	○
Korea	◆	▲	▲	△	○	○	△	○
Luxembourg	●	◆	●	□	○	◇	◇	◇
Mexico	●	●	●	□	□	□	□	□
Netherlands	■	◆	◆	◇	◇	◇	○	○
New Zealand	●	◆	◆	○	○	○	○	○
Norway	●	◆	◆	◇	◇	◇	○	○
Poland	◆	●	●	◇	◇	◇	◇	○
Portugal	●	●	●	○	□	◇	○	○
Spain	●	●	●	○	○	○	○	○
Slovak Republic	●	●	●	○	○	○	○	○
Slovenia	◆	●	◆	○	○	○	○	○
Sweden	●	◆	●	◇	◇	◇	□	◇
Switzerland	◆	◆	◆	◇	◇	◇	◇	◇
Turkey	●	●	●	○	○	○	○	○
United Kingdom	■	◆	▲	□	◇	□	□	◇
United States	●	●	●	○	○	○	○	○
European Union	■	◆	◆	◇	◇	□	□	◇
Total OECD								
■ For all primary laws	6	0	3					
▲ For major primary laws	2	1	3					
◆ For some primary Laws	9	16	11					
● Never	17	17	17					
□ All ex post evaluations				9	5	9	7	2
△ Ex post evaluations regarding major primary laws				2	3	1	2	2
◇ For some ex post evaluations				9	10	11	8	10
○ Never				14	16	13	17	20

Source: OECD (forthcoming), OECD Regulatory Policy Outlook 2015, based on the 2014 OECD Regulatory Indicators Survey results.

StatLink <http://dx.doi.org/10.1787/888933248972>



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