

REGULATORY POLICY REVIEW

SLOVAK REPUBLIC

PROJECT QUESTIONNAIRE

REGULATORY POLICY REVIEW: SLOVAK REPUBLIC

Please reply by **1 August 2019**

BEFORE YOU START

Please answer each question fully but concisely.

If you have the impression that a question has already been answered in the scope of the *2017 Indicators on Regulatory Policy and Governance (iREG)* survey, you do not have to provide the information again. In this case, please reference the respective question code in the iREG questionnaire.

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

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

Provide the name and contact details (direct telephone and email address) of the official who can provide further information or answer questions.

Reply in English or French. Attachments can be in their original language (if your attachments are in Slovak, please provide us with a short summary in English or French).

Regulation: what the term means for this questionnaire

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

Please provide the name and contact information of the person(s) who has completed this questionnaire.

Name: _____

Title: _____

Ministry/Organisation: _____

Address: _____

Telephone: _____ Fax: _____

Email: _____

A. Regulatory Policy(ies)

Regulatory policy may be defined broadly as an explicit, dynamic, and consistent “whole of government” policy to pursue high quality regulation. A key part of the OECD’s 2012 Recommendation on Regulatory Policy and Governance is that countries adopt at the highest political level broad programmes of regulatory reform that establish principles of “good regulation”, as well as a framework for implementation. Experience across the OECD suggests that an effective regulatory policy should be adopted at the highest political levels, contain explicit and measurable regulatory quality standards, and provide for continued regulatory management capacity. It also requires adequate resources and regular monitoring of progress achieved. Measures need to be built in to ensure compliance with regulatory quality processes and tools, including sanctions.

1. Please provide a **brief** overview of major developments in regulatory management over the last few years.
2. What are the principles and objectives of your country’s regulatory policy or policies? When and how were they adopted? How are they linked? Are core regulatory policy tools included (e. g. impact assessment, consultation, simplification, measures to reduce administrative burdens)? What parts of government does the regulatory policy(ies) cover (executive, legislature, agencies, sub-national levels)?
3. How has the current government indicated its support for regulatory reform? To what extent promoting regulatory quality has become an explicit objective, beyond the traditional approach based on legal quality?
4. Please describe any systematic efforts to communicate the benefits and costs of regulatory reform to the general public by assessing the impacts of reforms, benchmarking against international practices, etc.
5. Please comment on ICT (information and communication technologies) and e-government policies from a strategic perspective if these are especially important support tools for better regulation in your country.¹

B. Institutional framework and capacities for regulatory policy

Regulatory management needs to find its place in a country’s institutional architecture, and capacities for promoting and implementing better regulation need to be built up. The OECD’s country reviews highlight the fact that the institutional context for implanting effective regulatory management is complex and often highly fragmented. Approaches need to be customized, as countries’ institutional settings and legal systems can be very specific, and range from systems adapted to small societies with closely knit governments that rely on trust and informality, to large federal systems that must find ways of dealing with high levels of autonomy and diversity. Key regulatory oversight functions include the quality control of regulatory management tools like stakeholder engagement, RIA and ex post evaluation, the evaluation of the system for regulatory policy and the use of regulatory management tools, co-ordination of regulatory policy, as well as guidance and support.

Institutional setup for regulatory oversight

6. Please explain how the national administration is organized to carry out the following key regulatory oversight functions:
 - Quality control/scrutiny of the adequate use of the regulatory management tools stakeholder engagement, RIA and ex post evaluation of regulations;

¹ Please provide a brief strategic overview in this section. Use sections C, E and others to provide more detail on specific policies.

- Systematic improvement of regulatory policy, including the evaluation of the functioning of the regulatory policy framework and proposal of changes to improve the regulatory governance framework, and monitoring/reporting of progress and implementation of regulatory policy;
- Co-ordination of regulatory policy to promote a whole-of-government approach to regulatory quality, encourage the adoption of different aspects of regulatory policy across the policy cycle, and facilitate and ensure internal co-ordination across ministries in the application of regulatory management tools;
- Guidance, advice and support, e.g. official guidelines and trainings, as well as the provision of advice to those using regulatory management tools in practice;
- Scrutiny of legal quality of draft regulations.

Please describe the mandate and practical tasks of each actor involved in any of these tasks, including within the centre of government and line ministries, key committees or working groups, advisory bodies, parliament, the supreme audit institution, the statistical office, courts or others.

7. Please describe any co-ordination mechanisms between bodies that have responsibilities for regulatory oversight. What works well during co-ordination, and what are main obstacles for more efficient co-operation?

8. Please describe each body's capacities (resources, staff, expertise and qualifications of staff) to carry out their tasks related to regulatory oversight.

9. For bodies responsible for scrutinizing the quality of RIA, stakeholder engagement or ex post evaluation, please describe in greater detail the quality control process:

- What is the scope of quality control, e.g. which percentage of regulatory management tools and for which regulations does the body carry out quality control? Does the scrutiny apply to primary laws or subordinate regulations? Which aspects of a regulatory management tool does the oversight body scrutinize?
- At what stage during the preparation of a RIA/implementation of stakeholder engagement does the scrutiny take place? How much time does the oversight body have for carrying out the scrutiny?
- 10. Does the body provide advice on how to use regulatory management tools? If so, in what form and at what stage during the legislative development/evaluation process?
- 11. Does the body issue a formal opinion on the quality of a RIA/stakeholder engagement process/ ex post evaluation? If so, what kind of information does the opinion contain? Does it explicitly state whether the quality of the tool is considered sufficient? To whom is the opinion presented in the legislative development/evaluation process? Is the formal opinion made publicly available, and if so at what stage?
- What happens if the quality of a RIA/stakeholder engagement process/ex post evaluation is deemed insufficient? Can the oversight body stop a regulation/evaluation from proceeding to the next step in the legislative process? How and when are results of the scrutiny process presented, and to which audiences?

- Please provide examples of the opinion of an oversight body on a regulatory management tool, and documentation of how the results of the scrutiny were taken into consideration by the administration.

Is the performance of the body carrying out quality control evaluated systematically? For example, are reports prepared on the effectiveness of the body(ies), e.g. containing information on its activities, the fulfilment of its mission/mandate, or results of perception surveys of its performance?

12. How has the institutional structure evolved over the last few years? Please provide organigrams where possible.

Legislature (Parliament)

13. How does the legislature make use of regulatory policy tools like RIA and ex post evaluation prepared by the executive, e.g. in plenary debates or parliamentary committees? Does it scrutinize the quality of ex ante or ex post evaluations prepared by the executive? Does it conduct RIAs or stakeholder engagement for its own legislative initiatives or amendments? Has the parliament conducted ex post evaluations of existing regulations?

Judiciary

14. Please describe the general role of the courts in reviewing regulations, and the basis on which courts can overturn regulatory decisions. What changes have there been in recent years?

Regulatory agencies²

Regulatory agencies (also referred to as regulators or regulatory authorities) mean public agencies with primary responsibility for operating or administering regulations (i.e. implementing, monitoring, enforcing and assuring compliance with), though they may also be involved in the design of regulations. They usually operate at arms' length from central administration institutions such as ministries. It is important to understand more of how they manage this process, and their interaction with "parent" ministries and other relevant institutions such as local levels of government.

15. How many regulatory agencies are currently established? Is creation of more such agencies planned? What sectors or activities do they cover? What is the degree of independence of their decision-making from political interference and how is it ensured? How are their mandates established, and how far do they differ in their mandates, governance structure, etc? Is there a general policy to guide their design, governance (i.e., directive board, nomination and removal of head), and functions?

16. Is there a possibility of conflicts in competences among regulatory bodies? If so, how are they managed and settled?

² Note that the aim is **not** to go into the detail of any specific agency or agencies, but rather, to identify the broad issues relating to agencies' rule-making, inspection and enforcement functions that matter for Better Regulation.

17. How are regulatory bodies evaluated? Is there a clear accountability structure to report the performance of regulatory bodies to the government, the legislative, and/or the public? Are there performance indicators available?

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

19. Can you make any general assessment of the degree to which regulatory agencies apply regulatory quality tools and processes?

Sub-national levels of government

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

The 2012 OECD Recommendation on Regulatory Policy and Governance encourages to “promote regulatory coherence through co-ordination mechanisms between the supra national, the national and sub-national levels of government” and to avoid duplication of conflict of regulations.

20. Does the Constitution or any other instrument(s) define and allocate responsibilities for rule-making among the different levels of government? Is there a legal or other framework for adjudication in case of conflict? To what extent do rule-making responsibilities overlap?

21. Please describe the main responsibilities and powers of sub-national levels of government (distinguishing between the different levels if relevant). In which areas do they have their own rule-making powers? In which areas do they have powers of implementation/supervision/enforcement for regulations that are set elsewhere? In which areas are they responsible for service delivery (such as waste management, local health care)? What is their role with regard to licences/permits and planning? Are sub-national units responsible for quality control of the regulations they issue? Or is this responsibility kept at the central level?

22. What co-ordination mechanisms exist between the national and sub-national levels of government to network on, discuss, agree and promote regulatory quality? Do sub-national levels of government have their own regulatory policies?

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

24. What mechanisms exist to resolve overlapping competences or disputes as regards responsibilities for rule-making?

Resources and training

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

25. Can you give an estimate of how many officials are directly/ indirectly involved in regulatory policy co-ordination and management and as a proportion of the total number of officials in the public service?

26. What kind of training is provided to those involved in the development of regulations (such as consultation, conduct of impact assessment, alternatives to regulation, risk management)? Who is covered? What supporting written materials are available? Can you estimate the number of officials who are given regulatory training (for example annually)?

C. Stakeholder engagement, transparency and communication

Transparency is one of the central pillars of effective regulation, sustaining confidence in the legal environment, making regulations more secure and accessible, less influenced by special interests, and therefore more open to competition, trade and investment. It involves a range of actions including standardized processes for making and changing regulations, consultation with stakeholders, effective communication of regulations and plain language drafting, publication and codification to make them accessible, controls on administrative discretion, and effective implementation and appeals processes. It can involve a mix of formal and informal processes.

Stakeholder engagement and public consultation

27. What provisions exist for engagement with stakeholders when developing new regulations? Are there explicit and mandatory requirements? Do they cover all regulations? Is a distinction made between early informal consultations and formal consultations?

28. Do you have explicit guidelines on stakeholder engagement/public consultation? Who is consulted? At what stage of the rule-making process are stakeholders engaged? How much information does the government disclose? What information are those consulted asked to provide? How long do they have to reply?

29. Do ministries or agencies developing regulations often use the data and information gathered during consultation to quantify impacts of regulation? Do you have any explicit examples?

30. Do stakeholders receive an opportunity to comment on the quality of RIA before the draft regulation comes into force? Are ministries required to respond to comments on the draft RIA and regulation and if so, how do they do this in practice? Please provide an example.

31. What use is made of ICTs?

32. Is the public consultation process linked to impact assessment procedures? How?

33. Does the government report on the results of consultation, are stakeholders provided with feedback and explanations?

34. Are there any specific procedures for stakeholder engagement in the process of negotiating on new EU regulations?

35. Have you experimented with behavioural techniques (see Section I) to inform stakeholder engagement? If so, could you provide any examples?

Public communication

36. Are regulatory requirements communicated systematically to affected parties? Please describe requirements for publishing and otherwise making regulation accessible to affected groups (distinguishing between primary laws and subordinate regulations), as well as any “plain language” drafting requirements.
37. Have central registries of regulations and associated formalities been set up? What use is made of ICT?

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

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

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

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

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

Forward planning

38. Is there a system for forward planning of rule-making activity? What does it involve? What regulations does it apply to (primary laws, secondary rules etc)? What information is collected? Is the information made public? Is use made of electronic media?
39. What procedures are in place for the development of new regulations? For example are there requirements for consultation within government, outside government, publication, scrutiny by legislatures, due process for appeals? Who is responsible for enforcing the procedures?

Legal quality

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

Ex ante assessment of the impact of new regulations

Impact assessment is one of the most important regulatory tools available to governments. Its aim is to assist policy makers in adopting the most efficient and effective regulatory options (including the “no regulation” option), using evidence-based techniques to justify the best option and identifying the trade-offs involved when pursuing different policy objectives. Where relevant, the costs of regulation should not exceed their benefits, and alternatives should also be examined.

The experience around the OECD shows that a strong and coherent focal point with adequate resourcing helps to ensure that impact assessment finds an appropriate and timely place in the policy and rule-making process, and helps

to raise the quality of assessments.

Effective consultation with all stakeholders needs to be an integral part of impact assessment. Impact assessment processes have -or should have- a close link with general consultation processes for the development of new regulations. There is also an important potential link with the measurement of administrative burdens (use of the Standard Cost Model technique can contribute to the benefit-cost analysis for an effective impact assessment).

41. Does the process of developing new regulations include an impact assessment? Please describe this in detail. What regulations are covered (primary laws, subordinate regulations or other) and what exceptions are made? What rule-making entities are covered (national levels of government, sub-national levels, agencies etc)? What are the objectives and scope (economic effects, competitiveness, environmental, SMEs, social etc)? How long, on average, does it take to conduct a RIA? What are the mechanisms for co-ordination with those drafting the regulation?

42. Are objectives to be achieved with newly developed regulations regularly set? Are they quantitative? How is performance towards achieving these goals evaluated?

43. When developing regulation, what kind of impacts do ministries/agencies assess (e.g. impact on the budget, competition, trade, environment etc.)? Are costs being quantified and if yes, what kind (compliance costs, macroeconomic costs, financial costs, indirect costs etc.)? Are ministries/agencies required to assess and/or quantify the benefits of a new regulation?

44. When assessing these costs (and benefits), is data availability an issue? How do you tackle it? Please provide any statistics you may have available on the RIA process, including the number of RIAs conducted, the number of regulatory proposals exempted from RIA, or the proportion of RIAs where impacts are quantified. Please provide a few examples of RIAs recently conducted in different line ministries for illustrative purposes.

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

46. How can the public access impact assessment reports (e.g. via the internet)? At what stage of the policy making process are RIAs published?

47. What are the main demands from business and civil society organisations with respect to RIA? To what extent would the Government agree with those demands? What, by contrast, does not seem realistic in your view?

48. Are behavioural problems considered as part of your RIA process? If so, is this part of a behavioural insights (see Section I) initiative? If not, how are behaviours considered?

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

The use of a wide range of mechanisms, not just traditional “command and control” regulation, for meeting policy goals helps to ensure that the most efficient and effective approaches are used. The first response to a problem is often still to regulate. At the same time care must be taken when deciding to use “soft” approaches such as self and co regulation, to ensure that regulatory quality is maintained. The range of alternative approaches is broad, from voluntary agreements, standardization, conformity assessment, to self regulation in sectors corporate governance, financial markets and professional services such as accounting.

Delegated regulation and self regulation are significant areas. Governments may delegate rule- making, certification, or

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

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

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

Risk based rule-making (optional/where appropriate)

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

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

E. Tools and processes: simplification, ex post reviews and measures to reduce administrative burdens (stock)

Simplification and ex post reviews

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

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

52. Do you have an explicit policy for the ex post evaluation of regulations, other than administrative burden reduction, with specific targets and timelines? Please describe. For which regulations is ex post evaluation mandatory? Do you have guidelines for conducting ex post evaluations, and what training is offered to staff carrying out these evaluations?

53. Which aspects are assessed during the evaluation of a regulation? Are particular regulations regularly evaluated for their effectiveness and efficiency in meeting their goals? Which methods are used for the evaluation?

54. Are reviews conducted “regulation by regulation” or are there more comprehensive reviews of whole sectors or policy areas? Please explain how priorities for review were chosen and the scale of the reviews compared to the total quantity of regulation and provide concrete examples.

55. Do you take into account stakeholders’ input for determining the scope of such programmes, and how do you collect this input?

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

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

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

Burden reduction

Government formalities are important tools to support public policies, and can help businesses by setting a level playing field for commercial activity. But they may also represent an administrative burden as well as an irritation factor for business and citizens, and one which tends to grow over time. Difficult areas include employment regulations, environmental standards, tax regulations, and planning regulations. Permits and licences can be a major potential burden on businesses, especially SMEs. A lack of clear information about the sources and extent of administrative burdens is the first issue for most countries. Burden measurement has been improved with the adoption by a growing number of countries of standard cost model (SCM) analysis to information obligations imposed by laws, which also helps to sustain political momentum for regulatory reform by quantifying the burden. The use of ICT and e-government, by facilitating the provision of information to business and citizens, and promoting more efficient and user-friendly public services, is of increasing importance.

59. Please describe any explicit programmes aimed at reducing administrative burdens and formalities on business and citizens. Is there a national programme and has a national target been set for administrative burden reduction? What is the scope of the measurement exercise (baseline, sectors)?

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

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

Regulation inside government (optional/where appropriate)

Regulation inside government refers to the regulations imposed by the state on its own administrators and public service providers (for example government agencies or local government service providers). A number of governments have started to consider the issue of administrative burdens inside government, with the aim of improving the quality and efficiency of internal regulation in order to reduce costs and free up resources for improved public service delivery. The effective deployment of ICT and e-government is, again, of increasing importance as a tool for reducing the costs and burdens of regulation inside government.

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

F. Compliance, enforcement and appeals

Whilst adoption and communication of a law sets the framework for achieving a policy objective, effective implementation, compliance and enforcement are essential for actually meeting the objective. An ex ante assessment of compliance is increasingly a part of the regulatory process in OECD countries.

Rule-makers must apply and enforce regulations systematically and fairly, and regulated citizens and businesses need access to administrative and judicial review procedures for raising issues related to the rules that bind them. Tools that may be deployed include administrative procedures acts, the use of independent and standardized appeals processes, and the adoption of rules to promote responsiveness, such as "silence is consent". Access to review procedures ensures that rule-makers are held accountable, accountability being a necessary corollary to transparency. Review by the judiciary of administrative decisions can be an important instrument of quality control. For example scrutiny by the judiciary may capture whether subordinate rules are consistent with the primary laws, and may help to assess whether rules are proportional to their objective.

The issue of proportionality in enforcement, linked to risk assessment, is attracting growing attention. The aim is to ensure that resources for enforcement should be proportionately higher for those activities, actions or entities where the risks of regulatory failure are more damaging to society and the economy (and conversely, proportionately lower in situations assessed as lower risk).

63. Are enforcement and compliance strategies for newly developed regulations part of the regulatory impact assessment?

Compliance

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

65. Are reasons for non-compliance analysed and used as input to reviewing regulations?

Enforcement

66. Please summarise general approaches to regulatory enforcement (i.e., risk-based approaches, rewards and sanctions) and describe any specific enforcement policies, including any explicit consideration of the resource requirements for effective enforcement.

67. Are there any explicit, published cross-sectoral policies in your country that would deal with organisation, governance and functioning of inspection authorities? Are there any initiatives aiming at

improving inspections (i.e. risk-based orientation, consolidation of inspections)? What mechanisms are in place to evaluate performance of the inspection authorities?

Appeals

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

G. Ex post evaluation of regulatory management tools and policies

There is a growing interest in the systematic assessment of regulatory management performance- “measuring the gap” between regulatory policies as set out in principle and their efficiency and effectiveness in practice. How do specific institutions, tools and processes perform? Do effective regulatory policies and tools deliver effective regulation? What contributes to the effective design of regulatory tools and institutions? Part of the answer to developing a better understanding of the link between regulatory quality processes and actual regulatory performance is the application of ex post evaluation and measurement techniques. Some countries already have an explicit strategy for the ex post evaluation of these issues (covering for example impact assessment, consultation mechanisms, simplification and burden reduction strategies, and institutions such as central units and independent regulators). Evaluation can help to strengthen these tools and institutions. Challenges remain, including methodological challenges, resource issues, some resistance from participating institutions, the need to find a home for regular audits, and data problems.

Ex post monitoring and evaluation

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

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

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

72. Are behavioural problems considered as part of an *ex post* review? If so, is this part of a behavioural insights (see Section I) initiative? How are any findings regarding behavioural problems fed back into new policy development?

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

The effective negotiation and transposition of regulations emanating from the EU is of growing importance for member states, with an increasing proportion of national regulations originating at EU level. Whilst EC Regulations (not to be confused with the generic use of the term “regulation” for this project) have direct application in member states and do not have to be transposed into national regulations, EC Directives need to be transposed, raising the issue of how to ensure that the regulations implementing EC law are fully coherent with the underlying policy objectives, do not create new barriers to the smooth functioning of the EU Single Market, avoid “gold plating” and the placing of unnecessary burdens on business and citizens. Transposition also needs to be timely, to minimise the risk of uncertainty as regards the state of the law, especially for business.

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

also important, for example as regards EC regulations for the infrastructure sectors.

The national and sub-national perspective on how the production of regulations is managed at the EU level is important. Regulatory policies, including impact assessment, have been put in place by the EU Commission to improve the quality of EC regulations. The view from “below” on the effectiveness of these policies may be a valuable input to improving them further.

Negotiation

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

Transposition

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

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

Interface with Better/Smart Regulation at the EU level

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

I. Innovative approaches to regulatory policy making and the use of behavioural insights

77. Please comment on how your government utilizes innovative approaches to regulatory policy making.

- Is a mandate for using innovative approaches in regulatory policy making codified into any government strategy or policy document, such as part of a change or reform agenda? If so, please provide a link to the document.
- Who have been the main institutional supporters of innovation in your organisation?
- Do you liaise with other government departments/ministries/agencies to help improve innovation across the public service? If so, please describe the nature of this collaboration and if it is supported by any official agreements, such as memorandums of understanding.
- Are innovative approaches to regulatory policy making provided special funding and/or human resources?

- How are results from these efforts communicated to the public?

78. Has your government used behavioural insights³ (BI) in the research, design or implementation of regulatory policy? If so, please explain how and why BI is used? If not, why not?

79. Is the application of BI related to any other organizational priority, change or reform agenda? If yes, please explain (i.e. part of an effort to find alternatives to traditional regulation)

80. Please state how often (answer “all the time”, “most of the time”, “some of the time” or “Hardly ever/never”) and provide details on how BI is used in:

- Diagnosing policy problems
- Designing policy decisions, actions, or interventions
- Implementing decisions, actions or interventions
- Evaluating *ex post* decisions, actions or interventions

81. How are BI being institutionally applied and supported in your government? Is it through a central unit/multiple units/informal or formal network of practitioners, external advisory board, training and guidance materials for all employees, external support from other public bodies or consultancies, etc? Who provides institutional support?

82. Where does BI receive financial and human resources to support its use? Does your government employ behavioural scientists/experts? What are their backgrounds and where are they located in government?

83. Is your government actively seeking or gaining knowledge on BI? If so, how?

84. What is your process for analyzing, determining and testing BI initiatives? Do you test policies at a small scale using experimental methods, such as randomized controlled trials, laboratory experiments, or pilots? If you examples of current or past initiatives, please share.

85. How are the results of BI initiatives fed back into the policy making process to ensure they become integrated into policy responses?

86. How does your government communicate the results of BI initiatives? Please provide links to any publicly available documents.

³ Behavioural insights are defined as “an inductive approach to policy making that combines insights from psychology, cognitive science, and social science with empirically-tested results to discover how humans actually make choices.”