



BETTER REGULATORY POLICY: THE ROLE OF REGULATION AND REGULATORS

Luiz de Mello
Director, Policy Studies, Economics Department, OECD
ENEEL, Brasília, Monday, 18 June 2018



Roadmap to the presentation

1. Why does regulatory policy matter?
2. Improving the quality of regulation
3. Governance and performance of regulators



1. WHY DOES REGULATORY POLICY MATTER?



First of all: What do we understand by regulation?

Diverse set of instruments by which governments set requirements on enterprises and citizens

Laws, subordinate rules, administrative formalities and rules issued by non-government bodies and self-regulatory bodies to whom government has delegated regulatory powers

At the sector/industry level, regulation can include setting prices and/or improving the operation of a market so that consumers have access to secure services and service providers receive a reasonable rate of return



Why is regulatory policy important?

Regulation is one of the three core levers for government to manage the economy (along with fiscal and monetary policy)

Slow productivity growth calls for structural reforms → regulatory policy can facilitate competition and market forces in support of efficiency, equity and green growth

Devising regulations is rarely straightforward (technical complexities, uncertainties, political constraints, unintended consequences, collateral damage, excessive cost) → importance of embedding regulatory policy discipline in policy making



Network industries have been at the forefront of deregulation

OECD PMR indicator

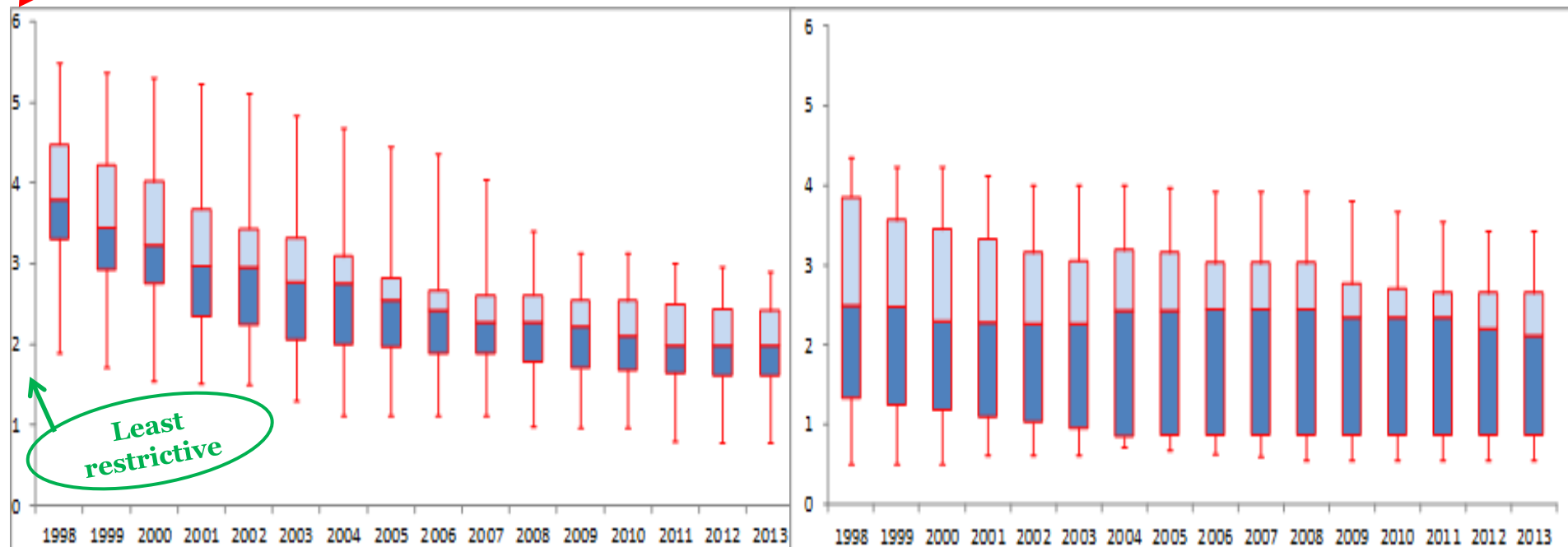
Index scale 0 to 6 from most to least independent

Most restrictive

Network industries

Professional Services

Least restrictive



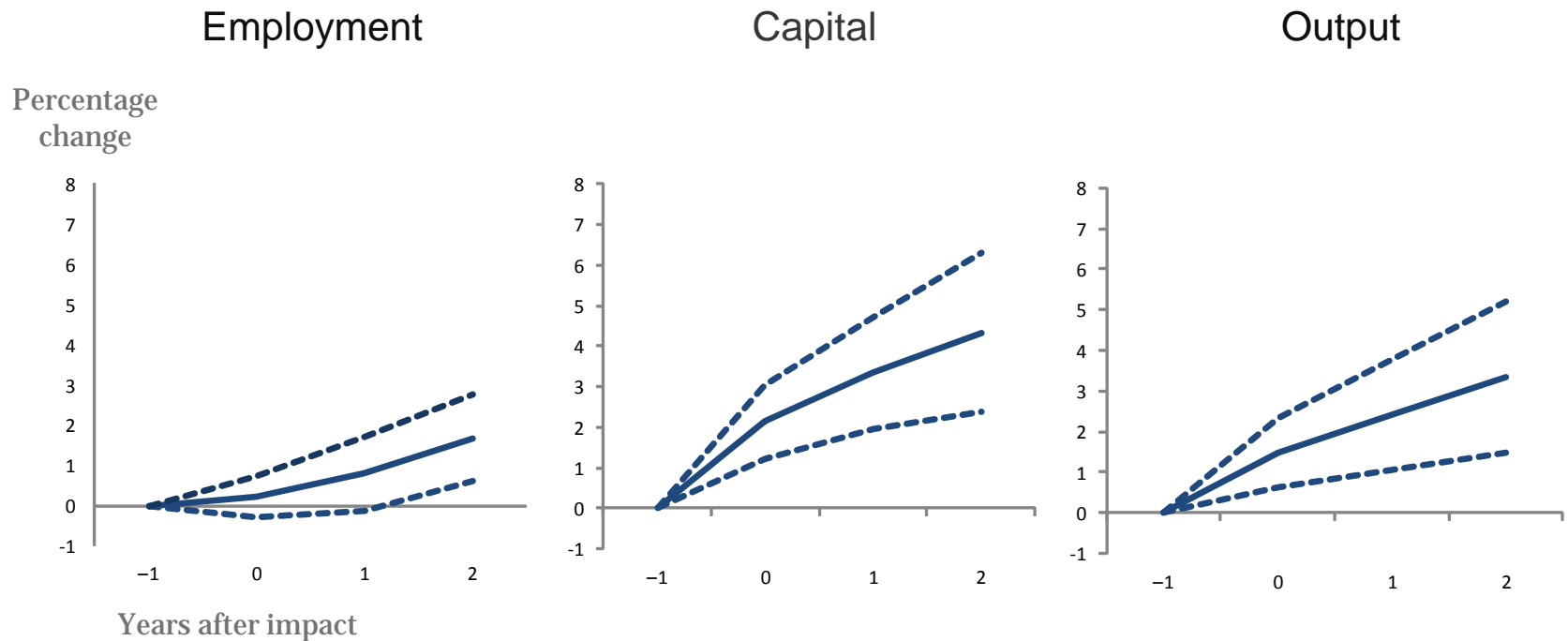
Notes: The horizontal line in the boxes represents the median, the upper and lower edges of each boxes reflect the 25th and 75th percentiles and the markers on the extremes denote the maximum and the minimum across countries.

Source: Gal, P. and Hijzen, A. (2016).



This has led to sizable economic gains at the firm level

Major reduction in the *overall restrictiveness* of regulation



Source: Gal, P. and Hijzen, A. (2016).



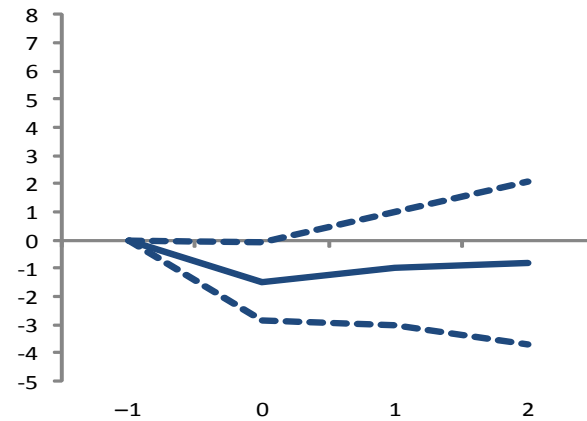
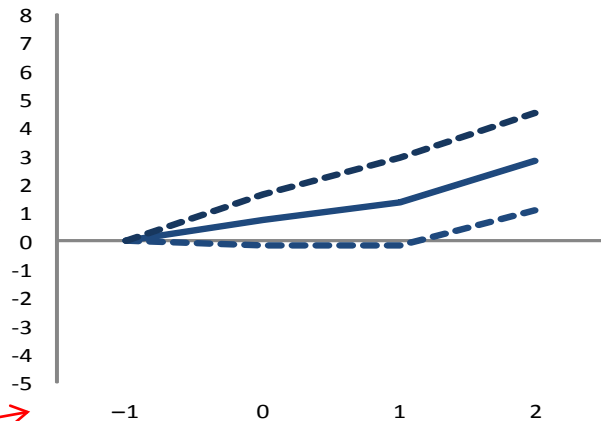
Employment effects are different in network industries

Employment after reforms in *Network industries*

Small firms (<20 employees)

Large firms (≥ 20 employees)

Percentage change in the variable of interest

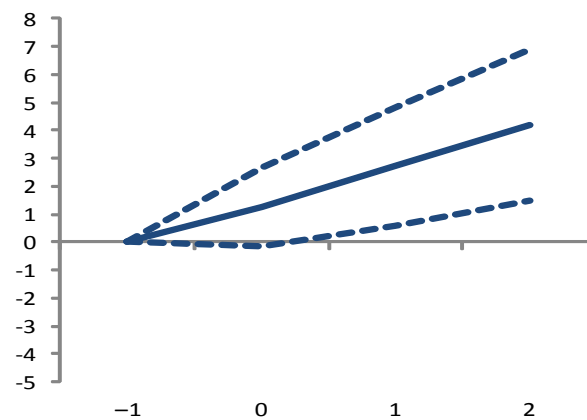
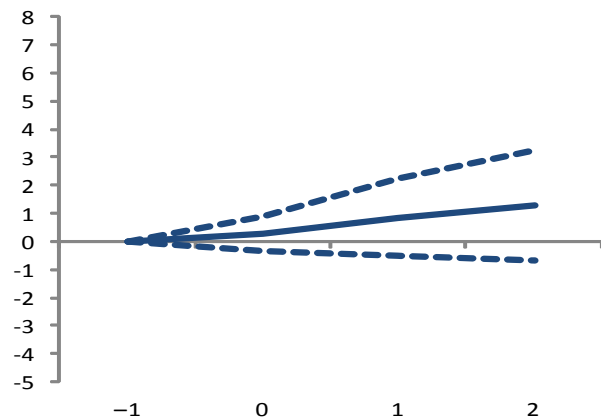


Years after the reform

Employment after reforms in *Retail trade*

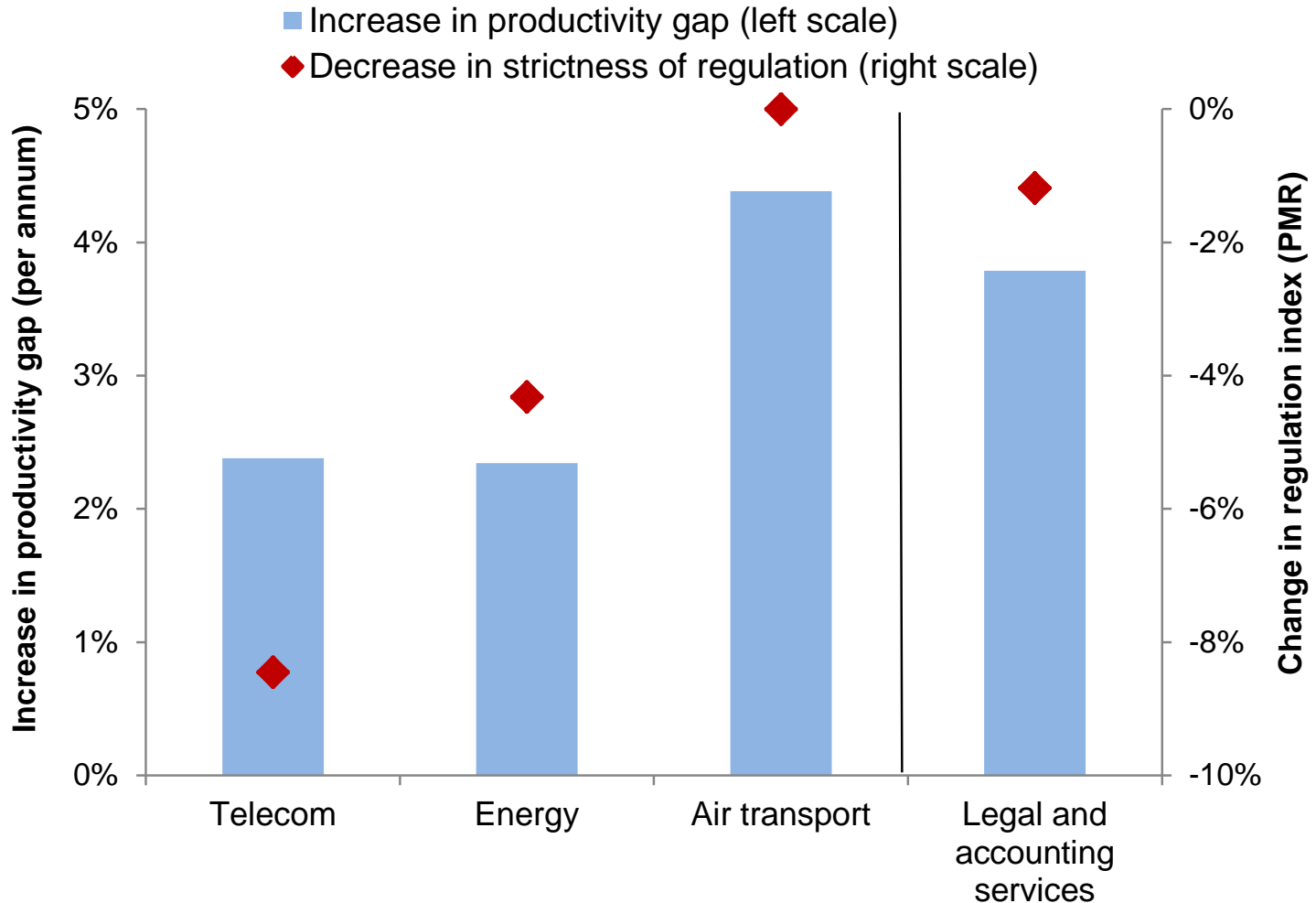
Small firms (<20 employees)

Large firms (≥ 20 employees)





The productivity gap between leaders and laggards is narrower where regulations foster competition

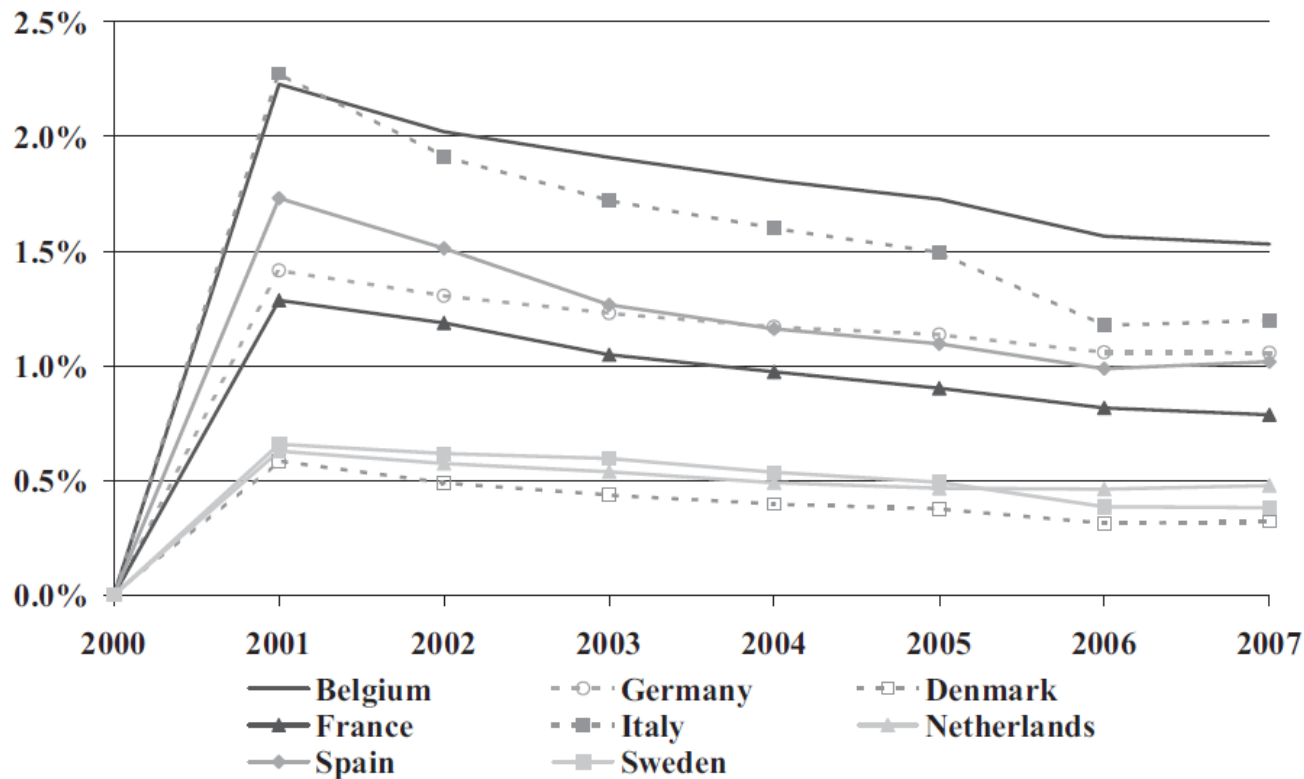


Source: Andrews, Criscuolo and Gal (2016).



Reforms in network industries lead to broader economy-wide benefits

Annual gains in average economy wide productivity growth from adopting the best regulatory practice in *upstream* network industries





2. IMPROVING THE QUALITY OF REGULATION



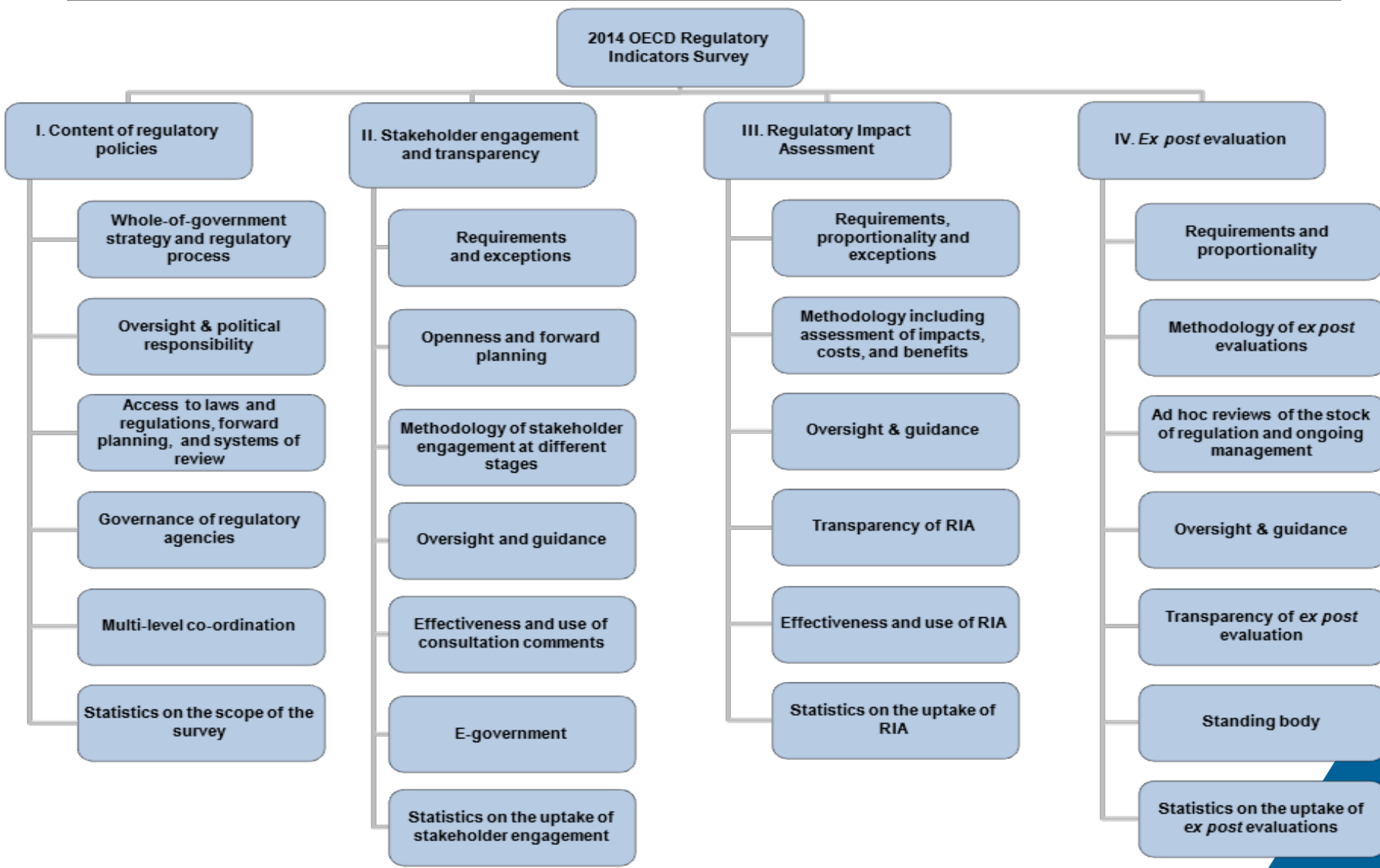
OECD has been working on improving the regulatory process for 20 years



- **20 years of experience** in dealing with regulatory policy/better regulation (OECD Regulatory Policy Committee and Network of Economic Regulators)
- **Internationally recognised principles:** *Recommendation on Regulatory Policy and Governance*
- **Regulatory policy reviews** of most member countries + **Brazil (2008)**, China (2009), Russia (2005), Indonesia (2012)
- 2015: ***Regulatory Policy Outlook***, First systematic review of regulatory practices across OECD countries, next edition in 2018

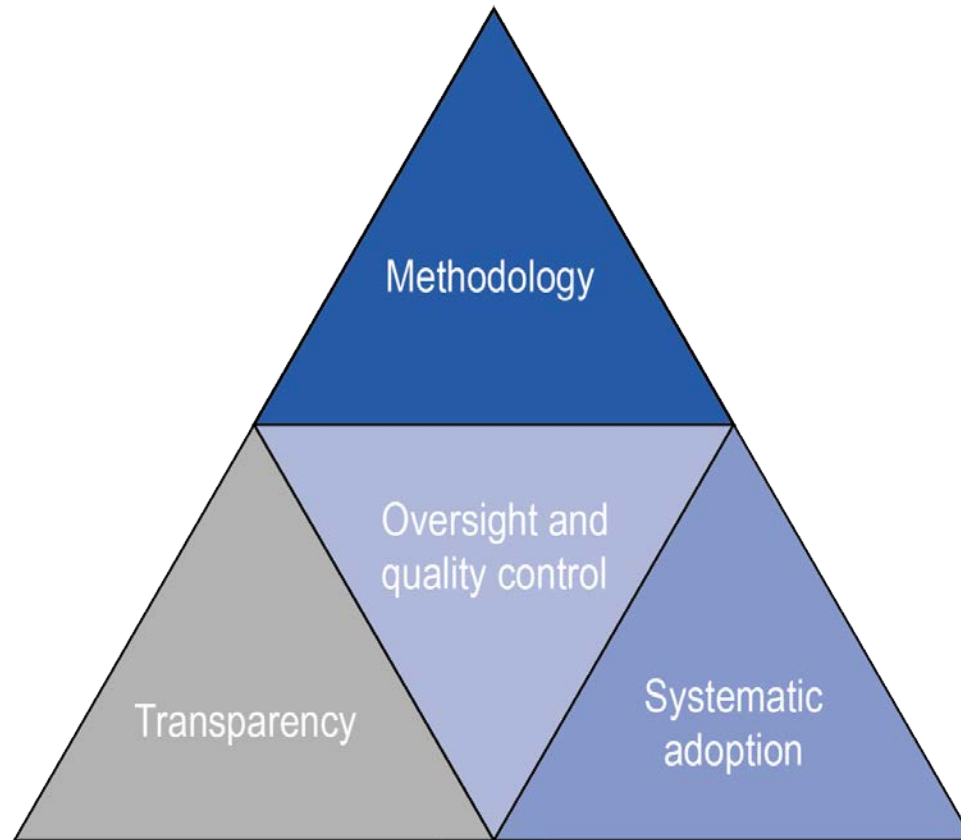


Scope of the 2014 Regulatory Indicators Survey



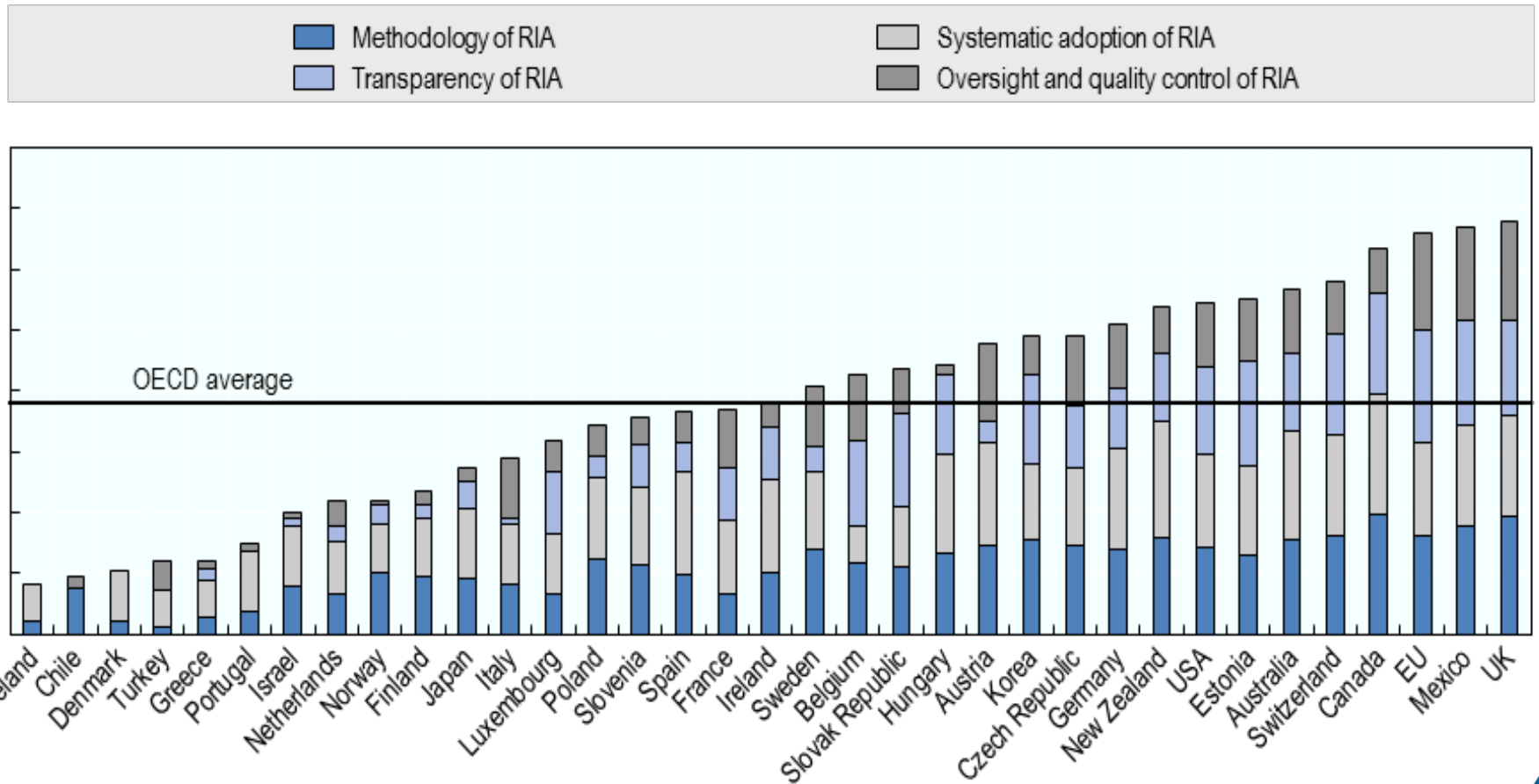


Methodology of the Indicators of Regulatory Policy and Governance





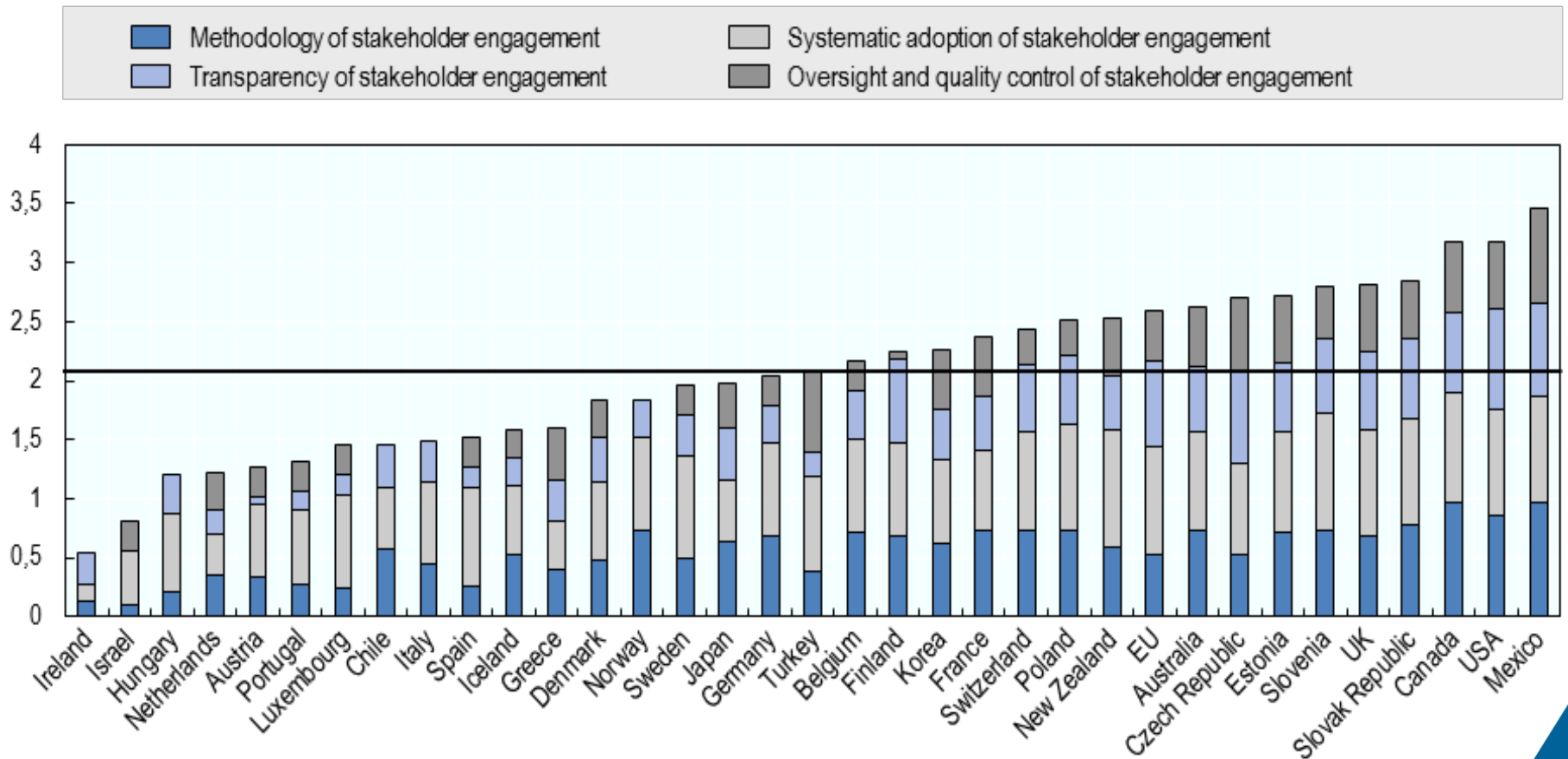
Regulatory Impact Assessment for subordinate regulations



Source: 2015 Regulatory Policy Outlook.



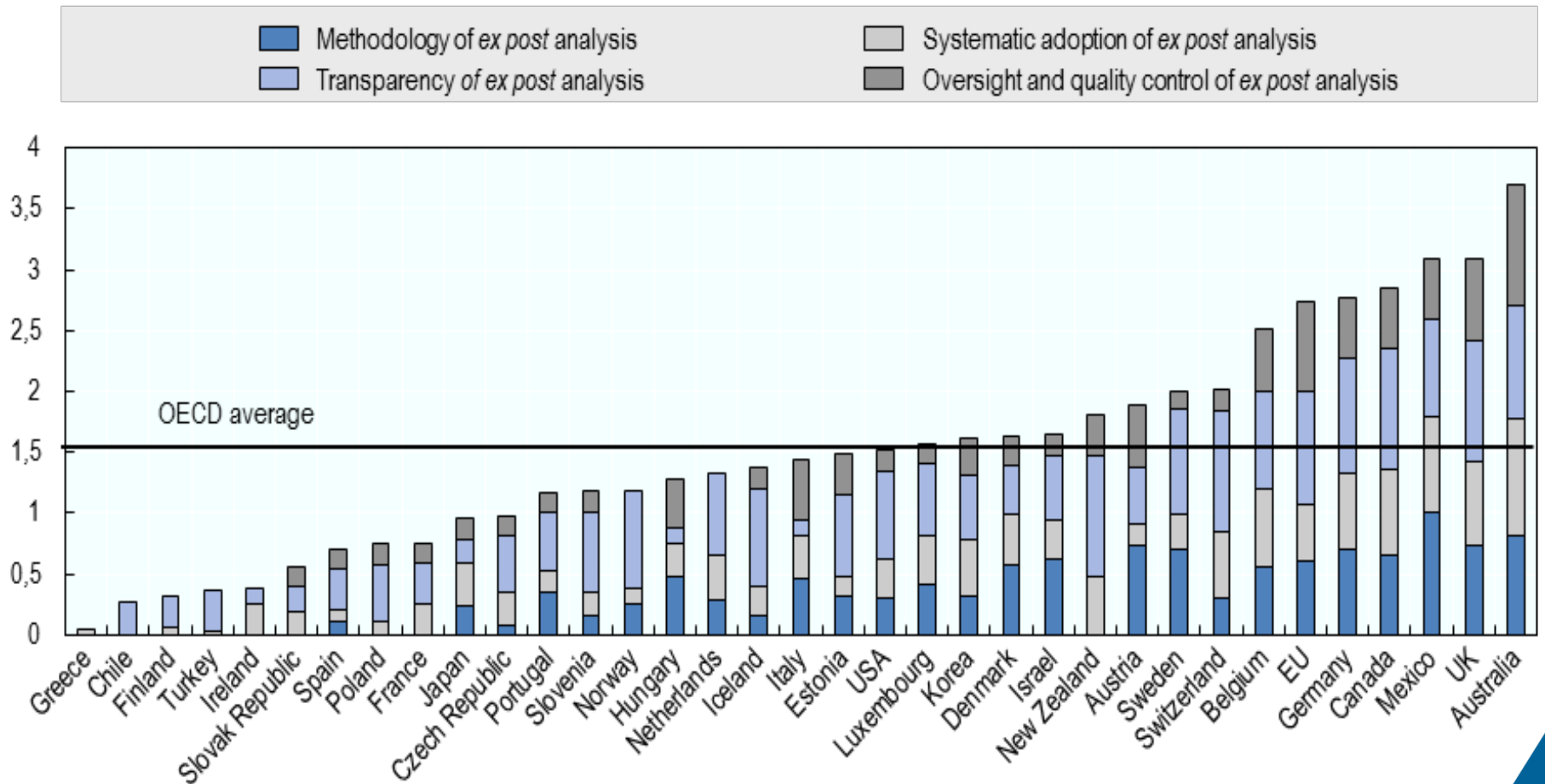
Stakeholder engagement for subordinate regulations



Source: 2015 Regulatory Policy Outlook .



Ex post evaluation for subordinate regulations



Source: 2015 Regulatory Policy Outlook .



3. GOVERNANCE AND PERFORMANCE OF REGULATORS



Regulatory agencies play a key role in better regulation



7. Develop a consistent policy covering the role and functions of regulatory agencies in order to provide greater confidence that regulatory decisions are made on an objective, impartial and consistent basis, without conflict of interest, bias or improper influence.



Public policies and investment in network industries

2007 OECD Survey on Infrastructure and Investment

Effects of regulation on investment through pricing (sector and firm-levels)

Considering also independence of regulators (legal status, own budget, decisions)



Independence contributes to a stable and credible framework for investment

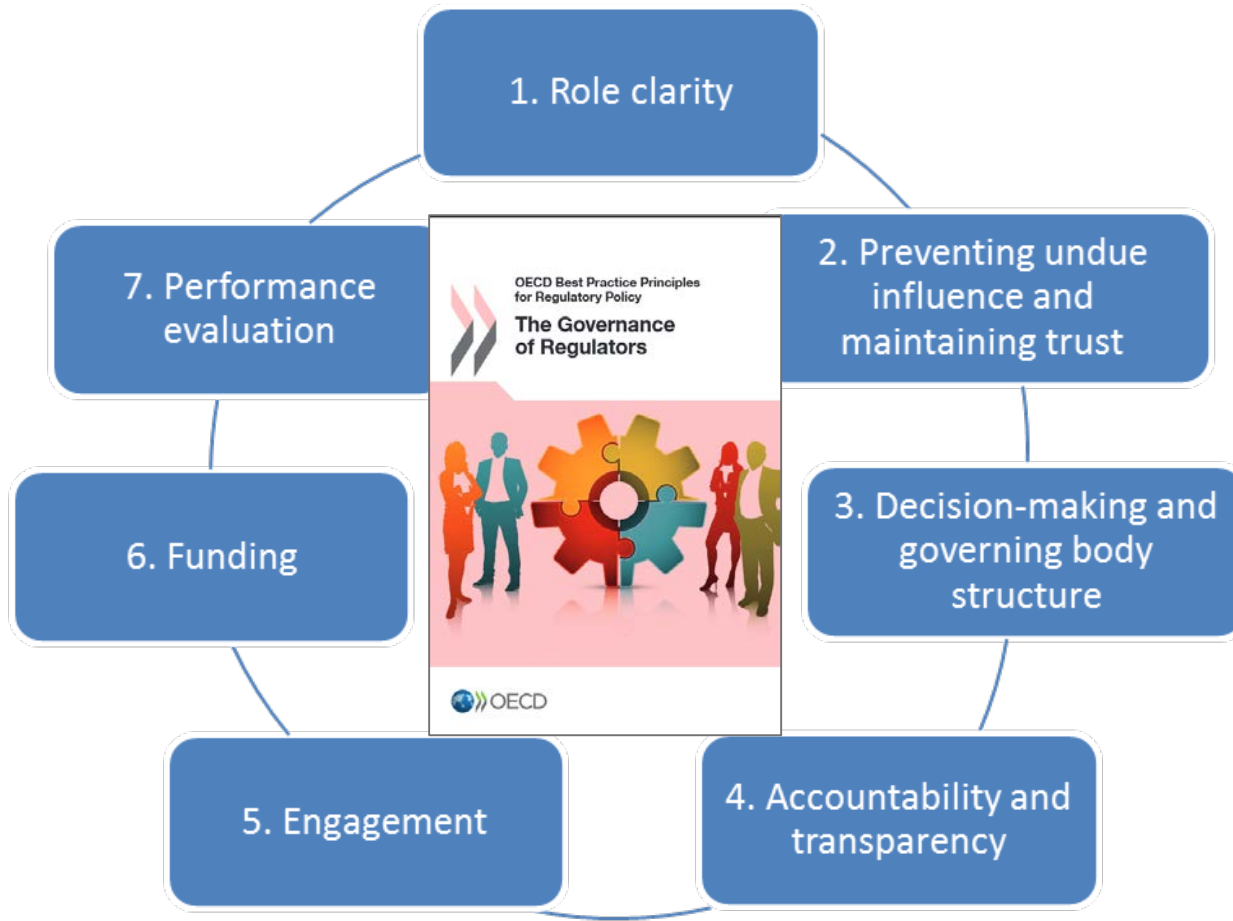
Data suggest that independence of sector regulators can help establish a stable and credible framework for investment

Policy mix: incentive price regulation has greater impact on investment when accompanied by independent regulator

Context: greater effect of independent regulator on certain sectors - open to competition



Best Practice Principles for the Governance of Regulators

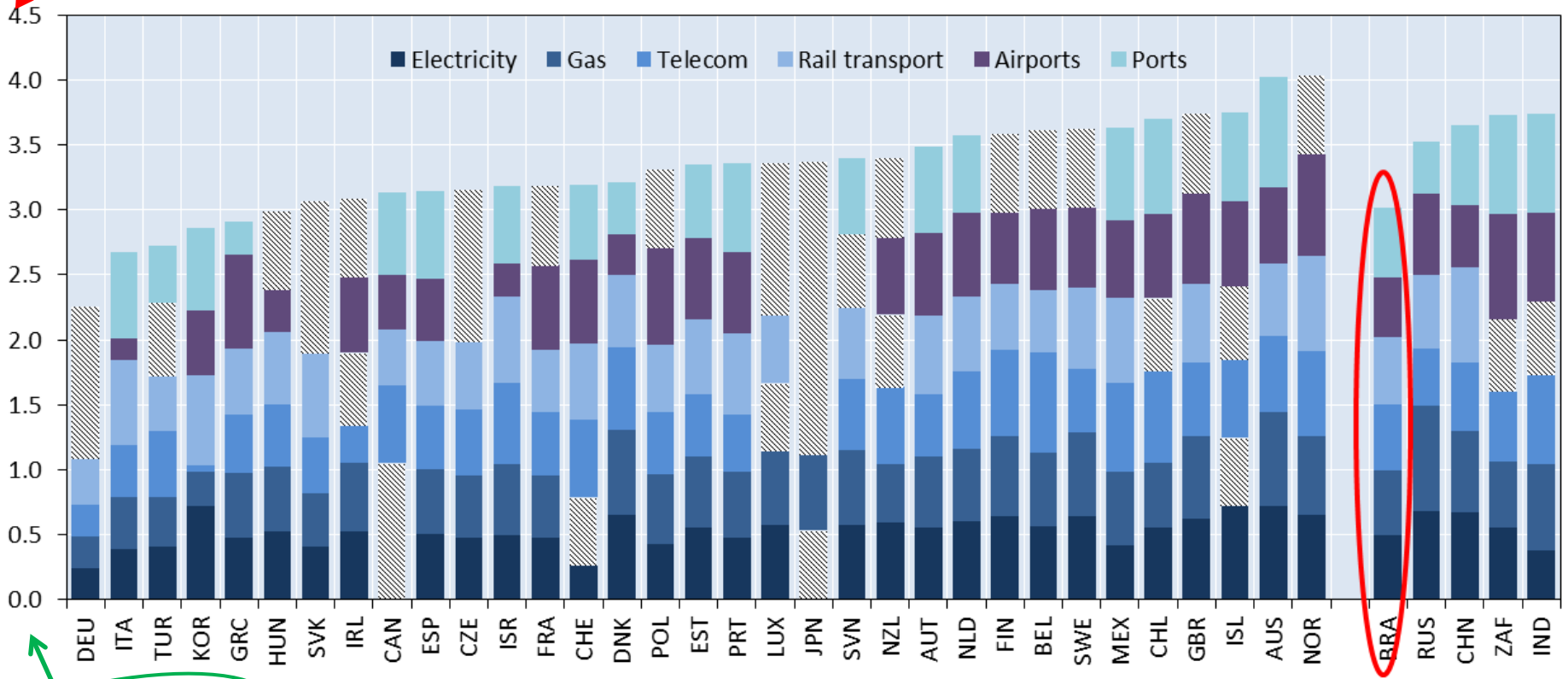




Formal independence varies across countries and sectors

OECD PMR indicator

Index scale 0 to 6 from most to least independent



least independent

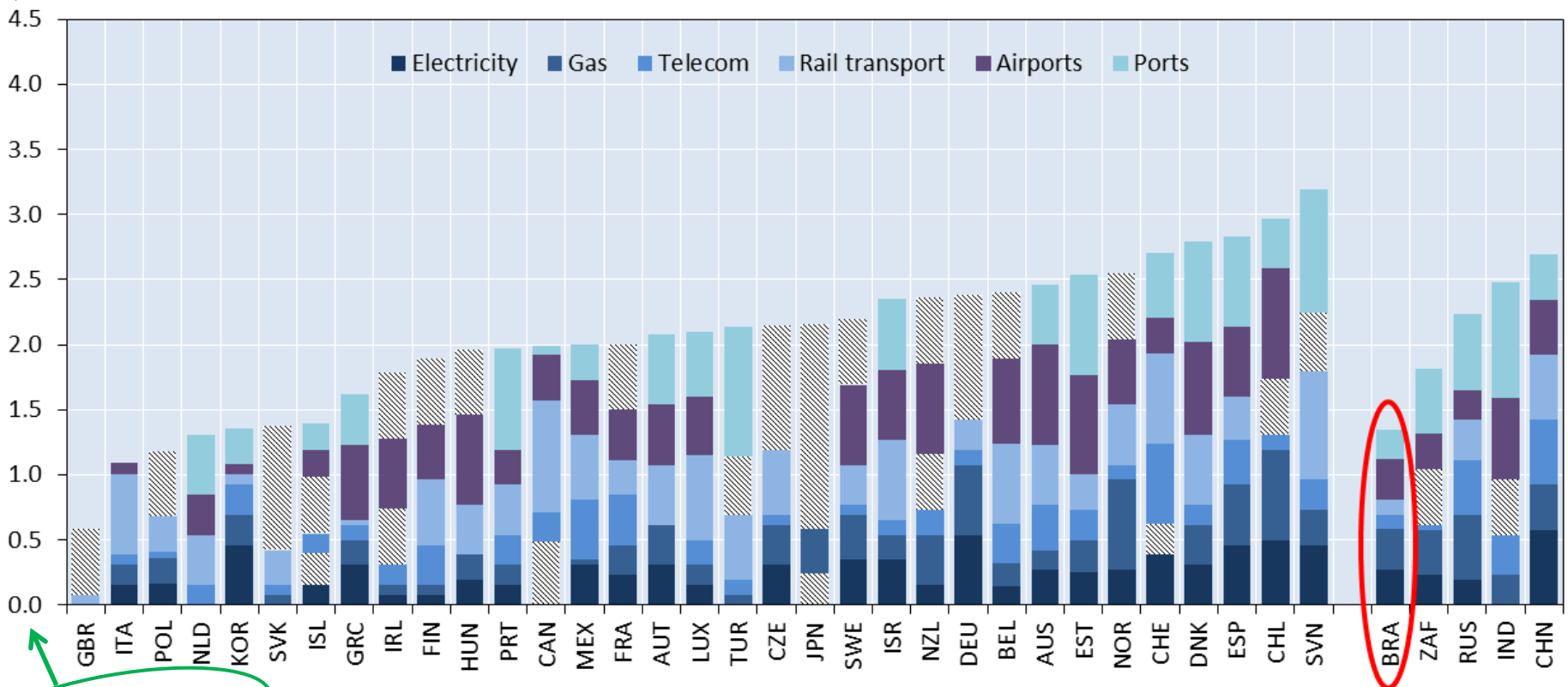
most independent



... as does the scope of action of regulators

OECD PMR indicator

Index scale 0 to 6 from most to least independent



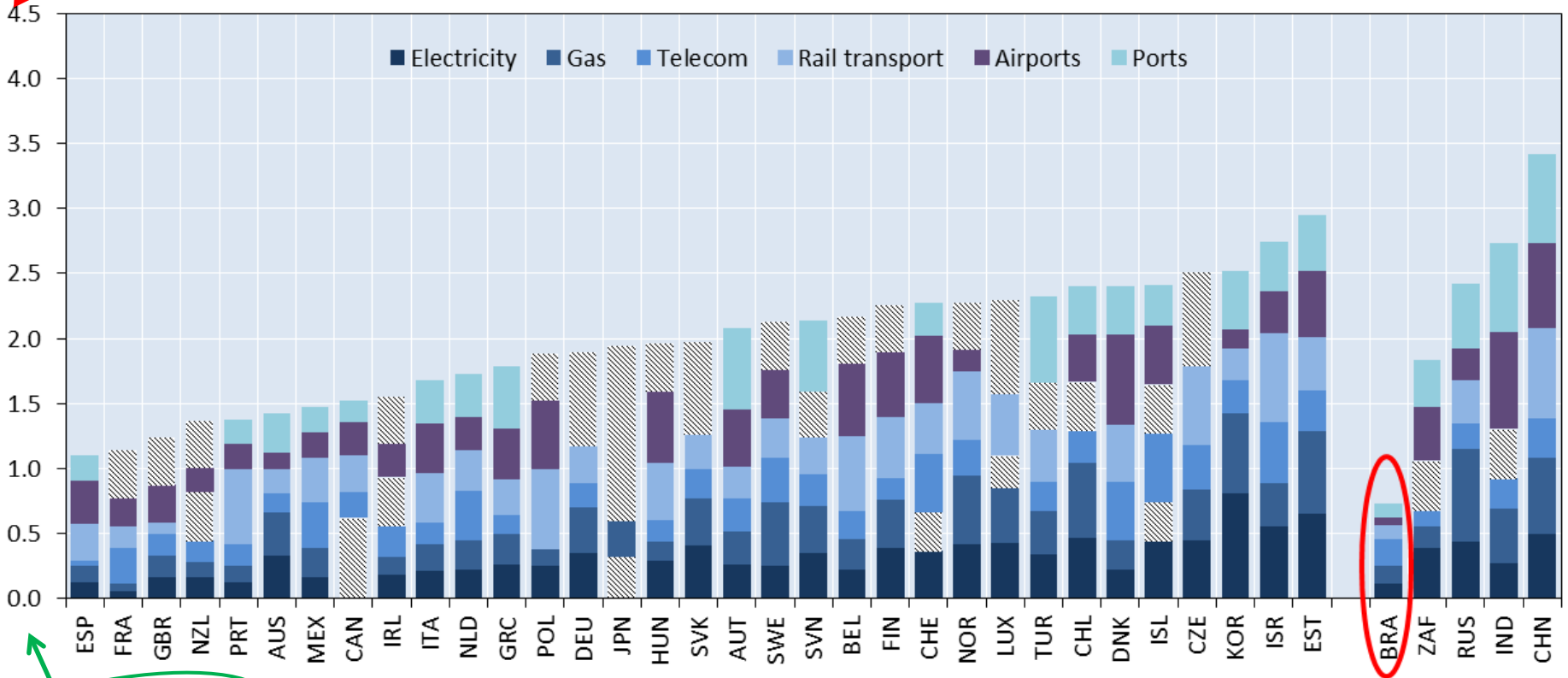
Source: OECD Product Market Regulation Database.



... and their level of accountability

least accountable

Index scale 0 to 6 from most to least accountable



most accountable

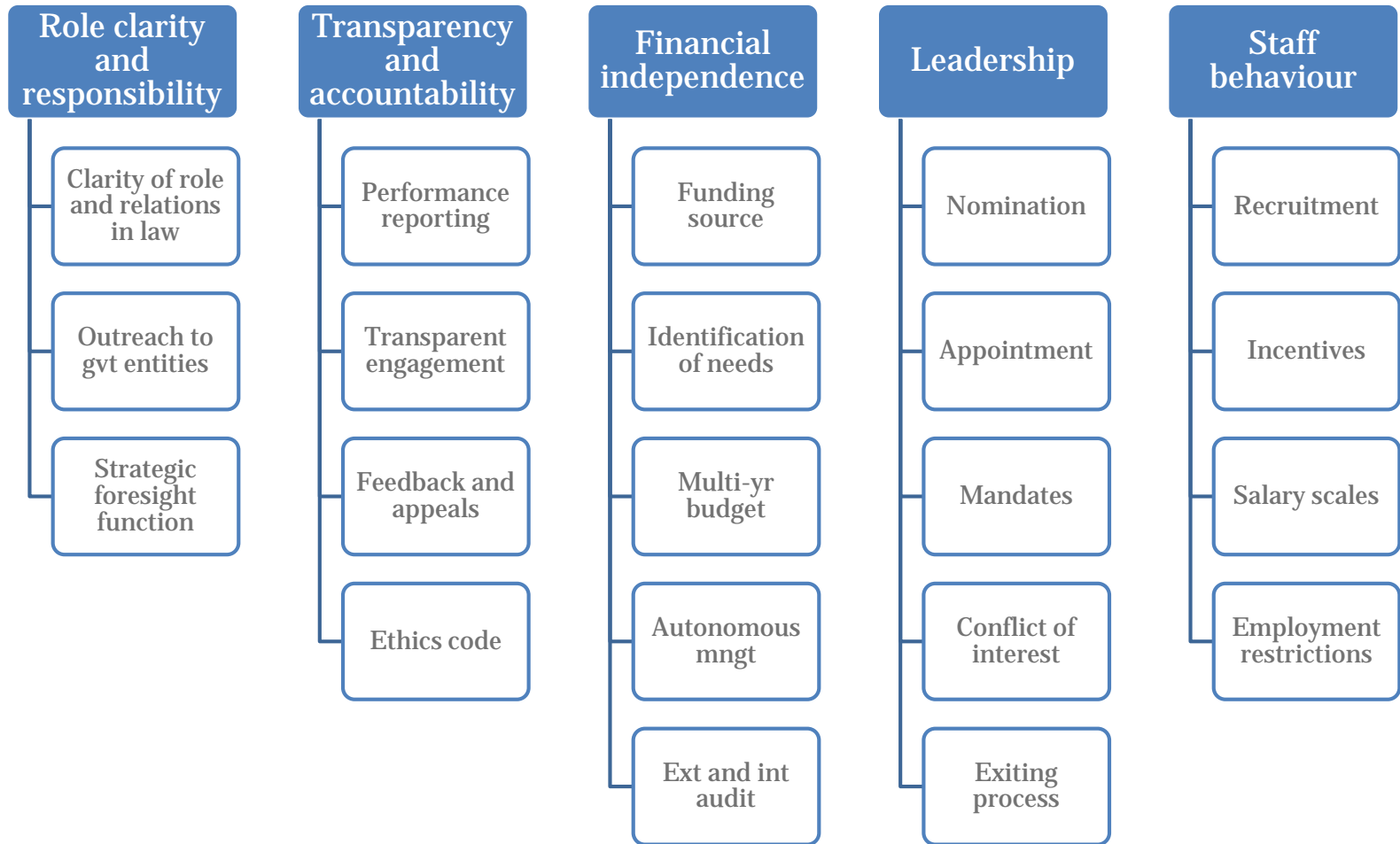


Formal and practical independence go hand in hand

Formal independence (<i>de jure</i>)	Practical independence (<i>de facto</i>)
<ul style="list-style-type: none">• Legal status of the regulator• Formal relationship with ministers, ministries and other government bodies and institutions• Terms of appointment for board members and termination provisions• Pre-employment and post-separation provisions• Funding	<ul style="list-style-type: none">• Administrative and institutional culture• Working relationship with government• Leadership• Daily interactions with regulated industry• Setting and managing the regulator's budget



Practical guidance by the OECD for creating a culture of independence





Embedding governance into organisational performance: PAFER reviews



Clearly identified role and objectives

Clear role and set of objectives aligned with functions and powers to inform achievable performance indicators



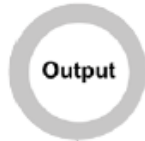
Efficiency and effectiveness of input

Organisational and financial performance (e.g. planned activities completed on time and on budget)



Quality of processes for regulatory activity

Experience and effective use of regulatory tools and processes (e.g. measurement of accuracy, timeliness, accessibility, participation, risk analysis, use of evidence)



Output from regulatory activity

Effective regulation decision, actions and interventions (e.g. decisions taken which were upheld)



Direct outcome/impact of outputs (e.g. compliance with regulator's decisions)

Wider outcomes – to note that these indicators are meant to be a “watchtower” to loop back and help identify problem areas, orient decisions and identify priorities. They should be used as learning (rather than accountability) indicators)

Market structure (e.g. level of concentration)

Service and infrastructure quality (e.g. frequency and reliability of services to consumers, reliability and deployment of infrastructure)

Consumer welfare (e.g. ability of consumer to choose the service that best fits their preferences)

Industry performance (e.g. revenues, profitability, investment)



PAFER applied to diverse regulators in Colombia, Latvia and Mexico

	On-going and completed reviews
2015	Colombia: Communications Regulator (CRC)
2016	Latvia: Public Utilities Commission (PUC) Mexico: Energy Regulators (external governance)
2017	Mexico: Agency for Safety, Energy and Environment (ASEA) National Hydrocarbons Commission (CNH) Energy Regulatory Commission (CRE)
On-going	Ireland: Commission for Energy Regulation (CER) Costa Rica: Regulatory Authority for Public Services (ARESEP) Superintendency of Telecommunications (SUTEL)



Key findings and performance drivers for regulators

- Defining priorities and measuring progress; use of performance indicators
- Status and relations with government (ministries and parliament); practice of independence
- Using regulatory quality tools; focus on regulatory quality
- Resource management; reconciling special needs with government-wide constraints



3. TO CONCLUDE...



To conclude:

- Effective regulation is key for growth and development
- Regulatory agencies are the interface between regulatory regimes and markets, citizens and businesses
- Governance of regulators matters for performance: a culture of independence can act as a buffer to undue influence
- The OECD stands ready to support the regulatory policy agenda and the performance of regulators in Brazil, via a number of tools and collaborations



Further information

Product Market Regulation Homepage

www.oecd.org/eco/reform/indicatorsofproductmarketregulationhomepage.htm

OECD work on regulatory policy

www.oecd.org/gov/regulatory-policy/

Network of Economic Regulators

www.oecd.org/gov/regulatory-policy/ner.htm

Behavioural Insights

www.oecd.org/gov/regulatory-policy/behavioural-insights.htm

OECD (2016), *Being an Independent Regulator*, The Governance of Regulators, OECD Publishing, Paris,

<http://www.oecd.org/publications/being-an-independent-regulator-9789264255401-en.htm>



References

- Andrews, D., Criscuolo, C. and Gal, P. (2016): "The Best versus the Rest: The Global Productivity Slowdown, Divergence across Firms and the Role of Public Policy", OECD Productivity Working Papers No. 5, OECD, Paris.
- Bournès, R., G. Cette, J. Lopez, J. Mairesse and G. Nicoletti (2013), "Do Product Market Regulations in Upstream Sectors Curb Productivity Growth?: Panel Data Evidence for OECD Countries", *Review of Economics and Statistics*, Vol. 95(5), pp. 1750-1768.
- Gal, P. and Hijzen, A. (2016): "The short-term impact of product market reforms: A cross-country firm-level analysis", OECD Economics Department Working Papers No. 1311, OECD, Paris.
- OECD (2014), *Regulatory Policy and Behavioural Economics*, OECD, Paris.
- OECD (2017), *Creating a Culture of Independence: Practical Guidance against Undue Influence*, The Governance of Regulators, OECD, Paris.