4 Access

This chapter assesses the level of implementation of the requirements on access for all stakeholders in the policy-making process, as provided for in the Principles embedded in the Recommendation. It finds that stakeholder participation in the policy-making process has increased overall, but that more meaningful engagement, greater transparency and better communication are needed to ensure that citizens and businesses feel included in the policy-making process. The chapter also shows that further consideration should be given to stakeholders' capacity if they are to effectively inform the policy-making process.

Introduction

Ensuring that all stakeholders from the private sector and the public at large have equal opportunities to inform and shape public policies is a key to achieving better policies. It implies that policy makers will be better informed to legislate and that most interests will be included and represented in policy outcomes. The OECD Recommendation on Principles for Transparency and Integrity in Lobbying (hereafter the "Lobbying Principles") states that Adherents should provide a level playing field by granting all stakeholders fair and equitable access to the development and implementation of public policies (Principle 1). In addition, it encourages countries to consider the governance concerns related to lobbying practices (Principle 2), which continue to evolve, as well as how existing public governance frameworks can support this objective (Principle 3).

Following the adoption of the Lobbying Principles, other OECD instruments and policy guidance have also raised the need to promote the access of all stakeholders to the policy-making process (OECD, 2019[1]; OECD, 2015[2]; OECD, 2017[3]). In particular, the 2012 OECD Recommendation on Regulatory Policy and Governance [OECD/LEGAL/0390] recommends ensuring that regulation serves the public interest and is informed by the legitimate needs of those interested in and affected by regulation. This includes providing meaningful opportunities (including online opportunities, as well as in person or by written procedures) for the public to contribute to the preparation of draft regulatory proposals and to the quality of the supporting analysis (OECD, 2012[4]).[1] The 2015 OECD Recommendation on Budgetary Governance [OECD/LEGAL/0410] calls for facilitating the engagement of parliaments, citizens and civil society organisations in a realistic debate about key priorities, trade-offs, opportunity costs and value for money (OECD, 2015[5]). Most recently, the 2017 OECD Recommendation on Public Integrity has stated that governments should encourage transparency and stakeholder engagement at all stages of the political process and policy cycle, to promote accountability and the public interest, in particular granting all stakeholders – including the private sector, civil society and individuals – access in developing public policies and putting them into effect. Lastly, the 2017 OECD Recommendation on Open Government [OECD/LEGAL/0438] states that governments should grant all stakeholders equal and fair opportunities to be informed and consulted, actively engage them in all phases of the policy cycle and service design and delivery, and promote innovative ways to effectively engage with stakeholders in order to source ideas and co-create solutions (OECD, 2017[6]). The guide on "Communicating Open Government: A How-to Guide" offers governments further guidance on enhancing communication about open government initiatives, and using communication as a strategic tool to strengthen participation and support implementation of policies, as well as service design and delivery (OECD/OGP, n.d.[7]).

The 2014 report on the Lobbying Principles showed that most Adherents had developed regulations to increase openness and improve accessibility of stakeholders to the policy-making process. It reported, however, that such regulations and practices, had not managed to counterbalance the lobbying power of special interest groups. Many legislators and lobbyists surveyed believed that inappropriate influence-peddling was still a frequent problem (OECD, 2014[8]).

Since then, many OECD countries have strengthened their stakeholder engagement practices in regulatory processes. Reforms were related mainly to enhancing the transparency of the system, such as making public information about planned consultations, or publishing the comments received from stakeholders during such consultations (OECD, 2018[9]). Several countries have also broadened their consultation practices and made them more accessible to the wider public. However, even if formal requirements for engagement with all stakeholders usually exist, most countries still lack the institutional structure to ensure that this functions well in practice (OECD, 2019[10]; OECD, 2018[9]; OECD, 2015[11]). This has led to the analysis that:

- Opportunities for participation need to be increased.
- Stakeholders' capacity needs to be carefully evaluated.

Opportunities for participation need to be increased

There are several ways to allow for stakeholders' participation (OECD, 2017[6]), such as:

- **Information**: an initial level of participation characterised by a one-way relationship in which the government produces and disseminates information to stakeholders. It covers both on-demand provision of information and "proactive" measures by a government to disseminate information. Examples include access to public records, official gazettes and government websites.
- **Consultation**: a more advanced level of participation that entails a two-way relationship, in which stakeholders provide feedback to the government and vice versa. Examples include public hearings, the right to petition government, comments on draft legislation, and public opinion surveys.
- **Engagement**: when stakeholders are given the opportunity and the necessary resources (e.g. information, data and digital tools) to collaborate during all phases of the policy-cycle and in service design and delivery. These include models of representative deliberative processes such as informed citizen recommendation on policy questions, citizen opinion on policy questions, informed citizen evaluation of ballot measures and permanent deliberative models.

However, more needs to be done to ensure an effective, fair and balanced participation of interest. Three key challenges remain:

- Stakeholders may not always be aware of opportunities for participation.
- Stakeholders are introduced into the policy-making process at too late a stage.
- Limited information is available to stakeholders.

Stakeholders may not always be aware of opportunities to participate

Procedures and processes that allow for participation may not be well enough known to all stakeholders, and this lack of communication reduces the effectiveness of the processes. This may be due to a government's own lack of awareness of the relevance of communicating to citizens and stakeholders, or to a lack of human and financial resources to support a dedicated communication strategy. Findings from the upcoming OECD International Report on Public Communication (OECD, 2021, forthcoming) note that close to half of the centres of government surveyed identify human and financial resources as a key reason why they consider a variety of communication competencies challenging. This lack of communication could be an effective tool that is excluding certain stakeholders from participation, thus providing information about the engagement process only to a selected set of interests.

Evidence shows that most countries do not systematically inform the public in advance about upcoming consultations on the development of regulation (OECD, 2019[10]). Only nine OECD member countries inform the public for all forthcoming public consultations related to primary laws that are to be prepared, changed or repealed in the next six months (OECD, 2018[9]). Information about opportunities to participate can be provided, on the lines of Finland's "Demokratia" website (http://demokratia.fi/en/home/), or Scotland's government's consultation webpage (https://consult.gov.scot/), which includes information on consultations that have taken place and others that are open to participation.

The COVID-19 crisis has prompted some governments to take steps to allow for participation. Scotland's Government published a "COVID-19 Framework for Decision-Making", reviewed every three weeks, which details the government's response and offers information for interested stakeholders on opportunities to participate in policy making, through a list of contact points across the government (Scottish Government, 2020[12]).

Stakeholders are introduced into the policy-making process at too late a stage

Most OECD countries conduct consultation for all primary laws at a late stage of the legislative drafting process, although a few do introduce it in the early stages (Figure 4.1). This reduced window of opportunity often comes too late in the process to allow stakeholders effectively to influence the regulation or policy, and it may indicate that stakeholder engagement as a tool has been used as a mere formality (OECD, 2018[9]). As a consequence, stakeholders are likely to feel excluded from the decision-making process and may abstain from participating in future.

Figure 4.1. Stakeholder consultation at different stages of policy making
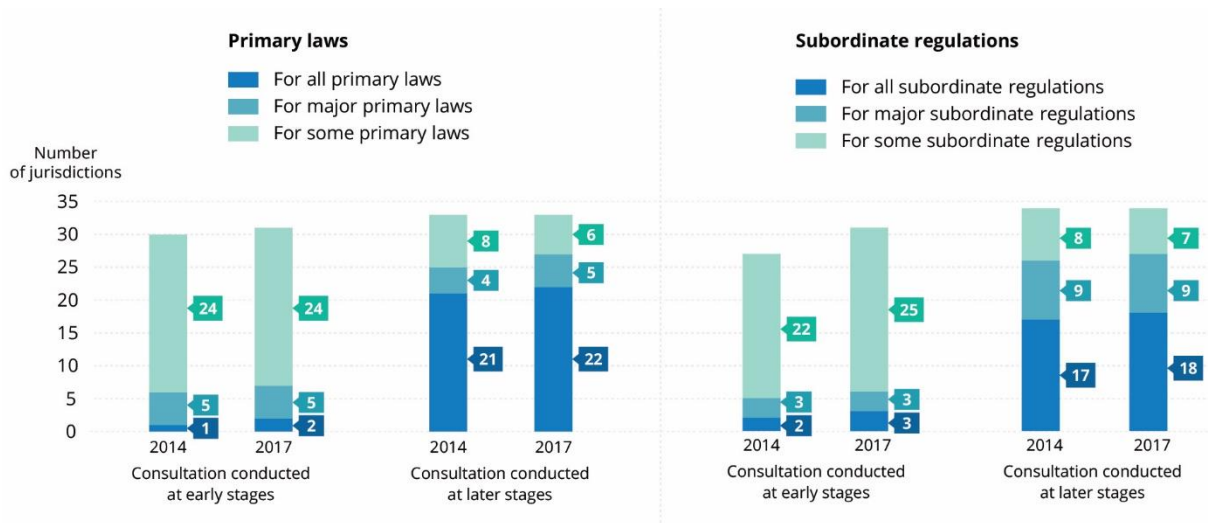
Note: Data is based on 34 OECD member countries and the EU.
Source: Indicators of Regulatory Policy and Governance Surveys 2014 and 2017, oe.cd/ireg.

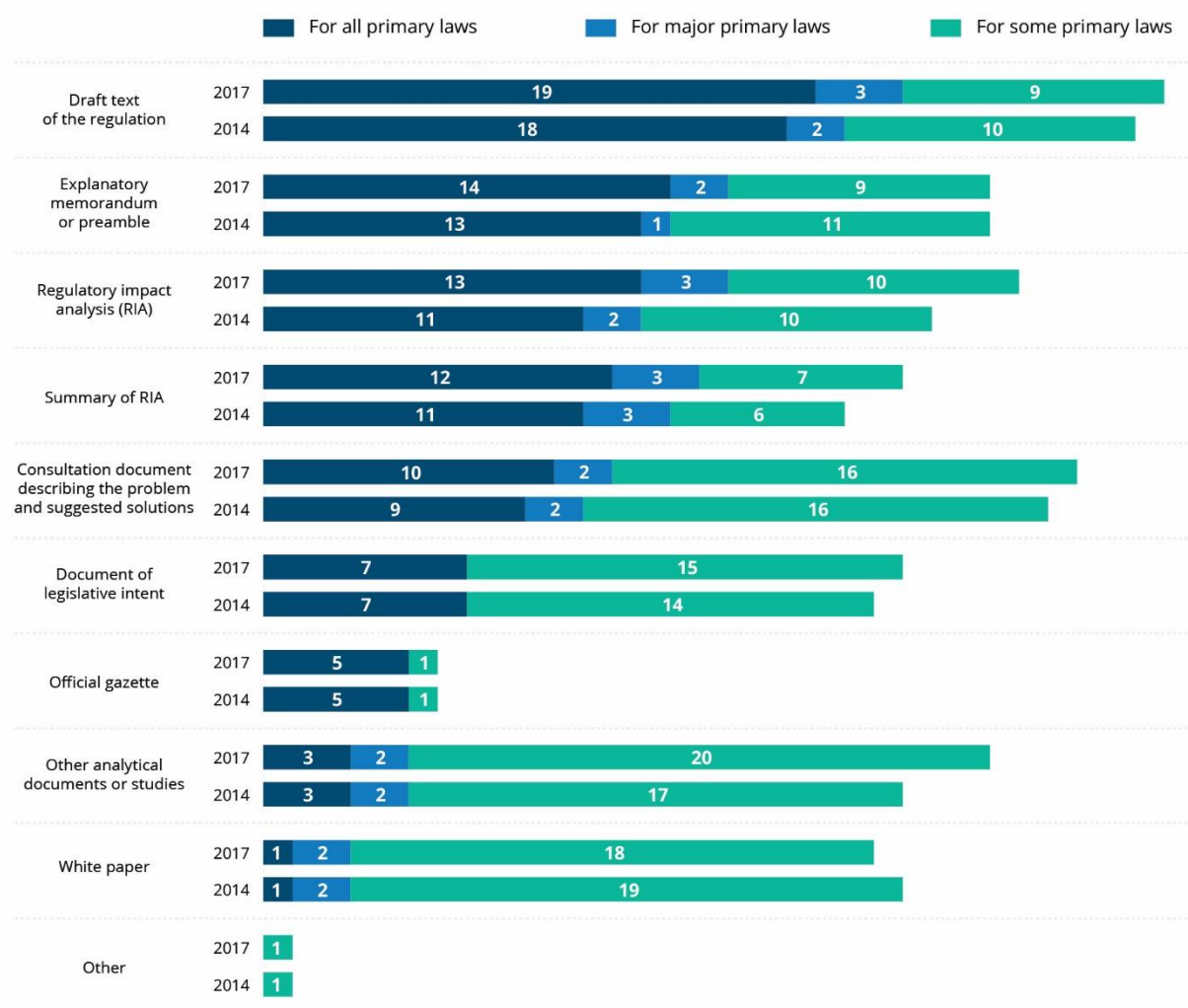### *Limited information is available to stakeholders*

Stakeholders have a basic right to obtain relevant information as well as the opportunity to access or request any information they consider relevant for preparing their participation. In OECD member countries, the right to access information held by public authorities is granted, but the strength of the legal framework to exercise this right varies significantly. To allow informed policy making, countries should continue to improve public access to the legal framework surrounding participation (chiefly access to information laws) and ensure that citizens and any other interested parties can obtain the information they need.

Governments usually also provide information to support stakeholders. Such information may be of a general nature, such as statistical data, reports or specific background information for a given stakeholder participation process. As indicated in the OECD Recommendation on Open Government [OECD/LEGAL/0438], the information should be easily accessible and reusable, to level the playing field for everyone interested. The OECD Open Useful and Re-usable data (OURdata) Index, based on the availability, accessibility and government support for the reuse of open government data, indicates that the general trend in performance across the OECD is positive, but that a need remains for more sustainable approaches to open government data policies (OECD, 2020[13]).

As for information concerning a given engagement process, countries tend to make a number of different documents available to support stakeholder engagement on developing regulation. They tend to provide these at the later phase of the rule-making process, when a preferred solution has already been identified and/or a draft regulation has been prepared (Figure 4.2). Of OECD countries, 57% provide stakeholders

with the draft text of the regulation to support their engagement for all primary laws. However, only 28% of OECD member countries provide the public with consultation documents describing the problem and suggested solutions for all primary laws (OECD, 2018[9]). The UK Government's website, for example, includes a "Related Documents" section for open and closed consultation processes. In this section, drafts of the projects or initiatives on which people are consulted can be found, as well as related analytical documents, different reports on impact assessment, a complete survey for the consultation and a report on the consultation process if it has already closed.

Figure 4.2. Documents available for stakeholders at a later phase of policy making

Source: (OECD, 2018[9]).

Stakeholders' capacity needs to be carefully evaluated

In addition to developing mechanisms for participation and increasing the opportunities, timing and information available to stakeholders, other challenges need to be considered:

- Stakeholders' capacities and capabilities need to be taken into account.
- Stakeholders face marginal benefits and high costs for participation.
- Stakeholders need feedback and follow-up.

Stakeholders' capacities and capabilities need to be taken into account

While promoting information is key, a protected civic space with clear legal frameworks, effective oversight and complaint mechanisms, as well as a respect for the rule of law, can help to protect people's ability to participate on an equal basis with others. Protection of civic freedoms and rights (freedom of expression, association and assembly) and from discrimination, in addition to access to information and an environment in which journalists and activists can perform a watchdog role, are particularly important.

Successful stakeholder engagement also requires that stakeholders have the capacity and capability to identify the right opportunity to participate. The information provided must also be relevant (avoiding information overload), easy to understand and presented in an unbiased way. Evidence from OECD countries shows that some of stakeholder participation initiatives attract a selective group of highly educated people (Michels, 2019[14]). The financial requirements or other transaction costs may be costly, and may restrict access to some stakeholders with less access to the necessary resources. Some stakeholders may thus consider the benefit of their own participation as marginal and may lack the confidence to identify opportunities for participating. Their cost of participating directly or organising with individuals with similar interests may be quite high.

Barriers to access related to capacities and capabilities are particularly problematic, as they usually imply the exclusion of certain social groups, such as older people, rural populations, groups with low income and low education levels, or groups that are unable to take advantage of new information and communication technology. Such barriers may reinforce the perception – and sometimes reality – of an elitist and non-inclusive policy-making process that does not take into account the interests of large sectors of the population. It is important to note that these barriers are not a given, and are often a reflection of how the participation process has been designed. To overcome this challenge, various design measures could be considered, such as sending out invitations to participate from a person of authority through a civic lottery, providing clear explanations of how a stakeholder's contribution will be responded to and can help to bring change, and providing payment, covering childcare, travel and other costs (OECD, 2020[15]).

Representative deliberative processes, such as citizens' assemblies and juries, are an increasingly common form of engagement that could help address these concerns. These involve a group of randomly selected citizens broadly representative of the public, who weigh evidence and hear from a wide range of experts and stakeholders on a complex policy issue. After considering the evidence and deliberating together, the group develops recommendations for policy makers. This requires random selection with stratification, to achieve a broadly representative group of people (OECD, 2020[15]). Participants in such processes should have access to the same evidence, so that their deliberations are based on access to the same facts, evidence and stakeholder positions.

Stakeholders face marginal benefits and high costs for participation

The costs of participating and voicing their interests and concerns may be so high for stakeholders and individuals that it exceeds the expected marginal benefit they may obtain. As a result, organising diffuse individual interests into an organised interest group may be impossible (Olson, 1965[16]). An underlying "free-rider" problem issue remains: while everybody might welcome the existence of an interest group to lobby in their favour, some would prefer others to carry the burden while benefiting from the results. For instance, a government may invite stakeholders for consultation on water service provision. An individual user may consider the costs of attending the consultation too high compared with a relatively marginal benefit. Water providers, however, have a clear and significant interest in influencing the water policy. Since they are organised, they are therefore likely not only to participate but to have a stronger say in such a stakeholder engagement process.

Following this logic, some interests may fail to organise, meaning that legitimate interests are not sitting at the table when relevant policies are being discussed. As noted earlier, vulnerable parts of the population may not be able to organise.

Governments should explore ways to either subsidise or transfer resources for the participation of groups that are profoundly impacted by a given regulation or policy, but that have not historically had sufficient access to resources to organise and lobby for their interests (Davidson, 2017[17]). However, only a few initiatives intend to proactively engage stakeholders, for example by providing incentives that could facilitate engagement in public life or incentives for organising into interest groups.

Stakeholders need feedback and follow-up

Diversity of stakeholders and interests may be undermined because of the expected lack of impact and because of disillusion or mistrust among stakeholders who are usually underrepresented. As noted earlier, if stakeholders are invited in at a stage where all relevant decisions have already been made, they are likely to feel that they have been abused for purposes of window-dressing and *ex post* legitimisation of a regulation or policy. After such an experience, they are likely to abstain from participating in future. Even if the timing of the engagement provides an opportunity for effective input, if the input is systematically disregarded and stakeholders receive no feedback, future engagement processes will lack legitimacy and relevance. While 82% of countries make stakeholders' input public, only 26% require policy makers to evaluate this input and publicly justify if and why their contributions are being dismissed (Figure 4.3).

Figure 4.3. Feedback on consultation comments is rarely made public
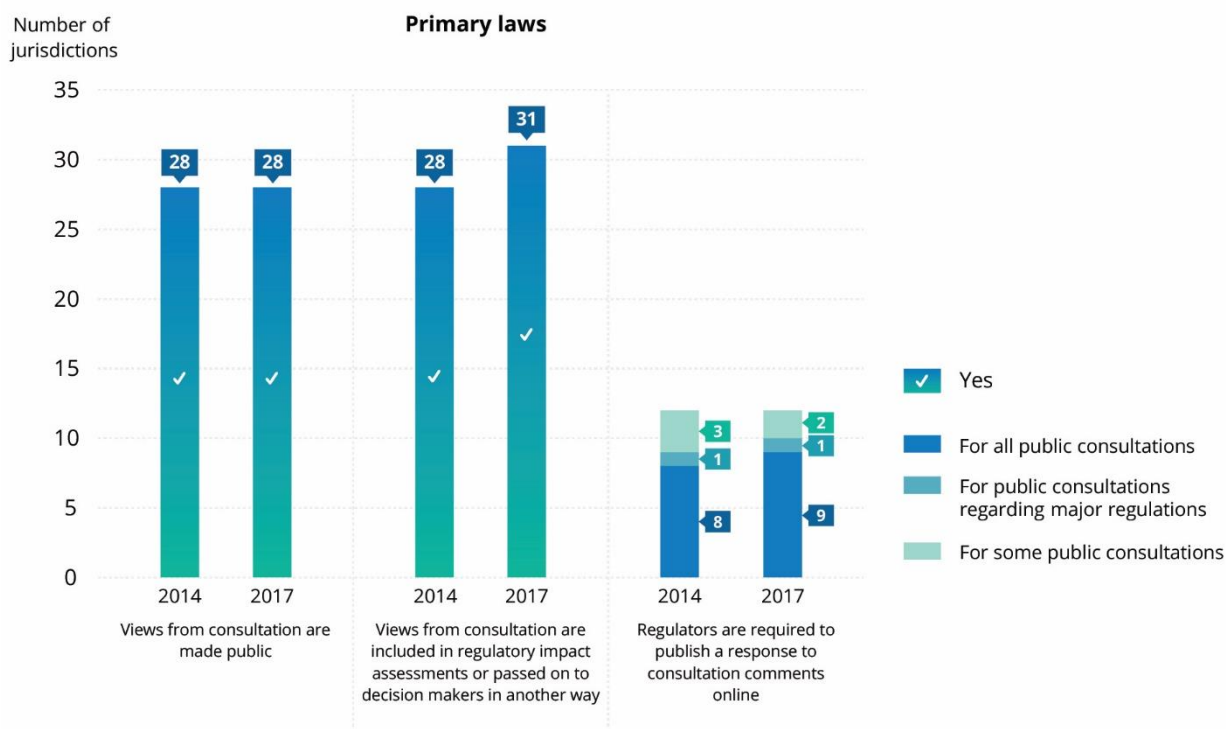
Note: Data is based on 34 OECD member countries and the EU.
Source: (OECD, 2018[9]).

Reports on public consultation could include at least a brief summary of the input received, with analysis and results. The UK government does this and publishes it online. Governments could also include in these reports all unedited input provided by participants, categorised and linked to policy goals and issues. In the feedback report on the consultation carried out as part of the development process of the Irish Human Rights and Equality Commission Strategy Statement 2016-2018, the commission presented unedited feedback from the public consultation process, so commissioners were informed of the direct views of participants, rather than relying on summaries or interpretations. It also allows participants to observe how their input was analysed and included in final results. This principle applies more broadly to any form of participation. It is one of the Good Practice Principles for Deliberative Processes for Public Decision Making (OECD, 2020[18]), which public authorities commit to responding to or acting on recommendations at the outset of the process, and follow up later with a progress report on implementation.

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Note

[1] The OECD is currently developing the OECD Best Practice Principles for Regulatory Policy: Stakeholder Engagement, and has developed a good practice database on stakeholder engagement: https://www.oecd.org/gov/regulatory-policy/pilot-database-on-stakeholder-engagement-practices.htm.
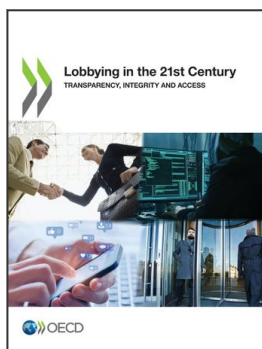
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