

6

Ex post evaluation of regulation in the Slovak Republic

This chapter focuses on how the Slovak government rationalises its existing stock of regulations, including how it undertakes reforms to improve regulation in specific areas or sectors to reduce administrative burdens or evaluate the overall effectiveness of regulation. The Slovak Republic has focused almost exclusively on administrative burden reduction, but the RIA 2020 Strategy introduces new *ex post* evaluation requirements.

The final stage of the policy cycle is to monitor and review how laws, regulations and other government policies affect citizens and businesses in practice. Even with proper *ex ante* analysis, governments are not able to predict precisely how the legislation will work in reality. At the same time, new technological developments might make regulations obsolete, or technology may create new ways of delivering on policy objectives in more cost-effective ways. Governments and law itself need to be agile, and the government should have a process in place to review the stock of regulation – both individual laws as well as packages of laws and policies across entire policy areas or sectors.

The stock of regulation is many magnitudes larger than the number of new regulations every year. As a result, governments may uncover significant economic gains by reviewing the current body of legislation. Unfortunately, OECD governments have been quite reticent in establishing successful *ex post* evaluation for regulations. OECD governments have adopted the fewest best practices found in the 2012 *Recommendation of Regulatory Policy and Governance*, based on the iREG indicators on *ex post* evaluation. Across many countries, the push for the government to review or modify regulations often only happens when an issue becomes a political priority. Relatively few OECD countries have regular programs to review regulations.

Box 6.1. The fifth recommendation of the Council on Regulatory Policy and Governance

Conduct systematic programme reviews of the stock of significant regulation against clearly defined policy goals, including consideration of costs and benefits, to ensure that regulations remain up to date, cost-justified, cost-effective and consistent and delivers the intended policy objectives (OECD, 2012).

5.1. The methods of Regulatory Impact Analysis should be integrated in programmes for the review and revision of existing regulations. These programmes should include an explicit objective to improve the efficiency and effectiveness of the regulations, including better design of regulatory instruments and to lessen regulatory costs for citizens and businesses as part of a policy to promote economic efficiency.

5.2. Reviews should preferably be scheduled to assess all significant regulation systematically over time, enhance consistency and coherence of the regulatory stock, and reduce unnecessary regulatory burdens and ensure that significant potential unintended consequences of regulation are identified. Priority should be given to identifying ineffective regulation and regulation with significant economic impacts on users and/or impact on risk management. The use of a permanent review mechanism should be considered for inclusion in rules, such as through review clauses in primary laws and sun-setting of subordinate legislation.

5.3. Systems for reviews should assess progress toward achieving coherence with economic, social and environmental policies.

5.4. Programmes of administrative simplification should include measurements of the aggregate burdens of regulation where feasible and consider the use of explicit targets as a means to lessen administrative burdens for citizens and businesses. Qualitative methods should complement the quantitative methods to better target efforts.

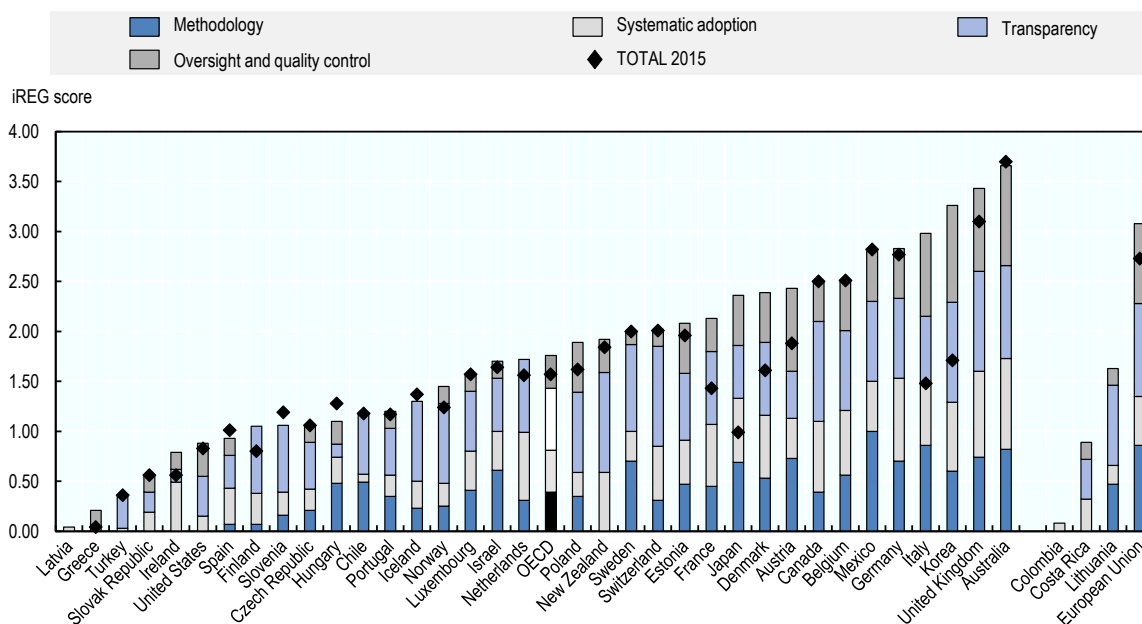
5.5. Employ the opportunities of information technology and one-stop shops for licences, permits, and other procedural requirements to make service delivery more streamlined and user-focused.

5.6. Review the means by which citizens and businesses are required to interact with the government to satisfy regulatory requirements and reduce transaction costs.

Source: (OECD, 2012^[1]), Recommendation of the Council on Regulatory Policy and Governance, <https://dx.doi.org/10.1787/9789264209022-en>.

The OECD has recently developed a new framework for reviewing the stock of regulations: The OECD Best Practice Principles for Regulatory Policy on Reviewing the Stock of Regulation to complement the 2012 Recommendation to support OECD governments in establishing the systematic review of regulations.

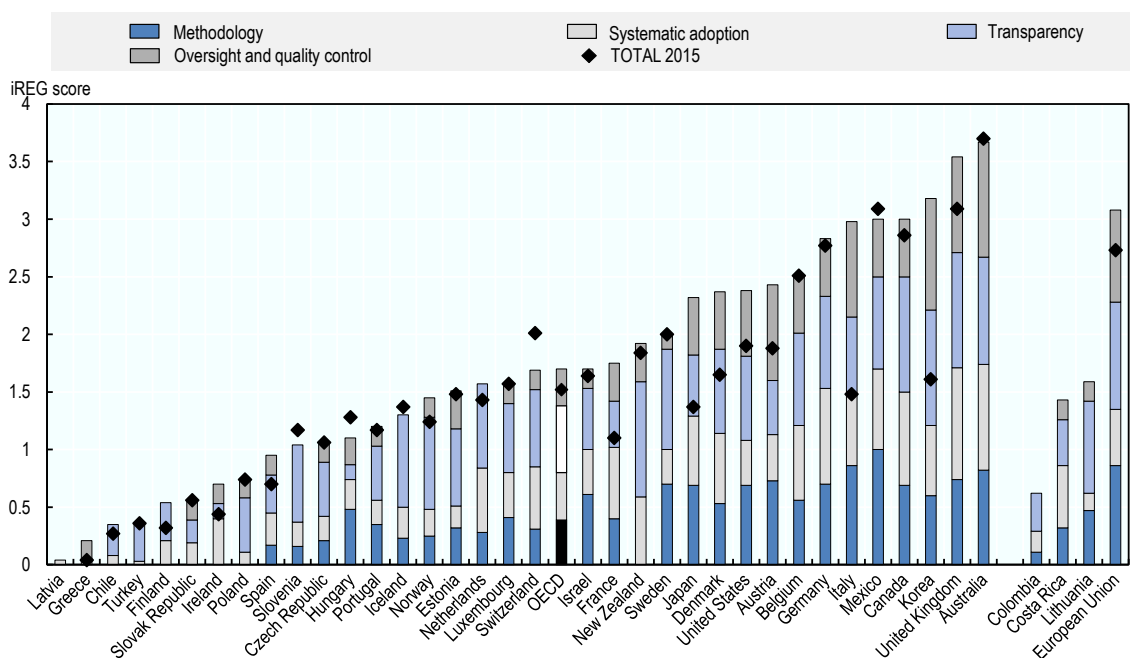
Figure 6.1. Composite indicators: Ex post evaluation for primary laws, 2018



Note: Data for OECD countries is based on the 34 countries that were OECD members in 2014 and the European Union. Data on new OECD member and accession countries in 2017 includes Colombia, Costa Rica, Latvia and Lithuania. The more regulatory practices as advocated in the 2012 Recommendation a country has implemented, the higher its iREG score.

Source: (OECD, 2018^[2]), Indicators of Regulatory Policy and Governance Surveys 2014 and 2017, <http://oe.cd/ireg>.

Figure 6.2. Composite indicators: Ex post evaluation for subordinate regulations, 2018



Notes: Data for OECD countries is based on the 34 countries that were OECD members in 2014 and the European Union. Data on new OECD member and accession countries in 2017 includes Colombia, Costa Rica, Latvia and Lithuania. The more regulatory practices as advocated in the 2012 Recommendation a country has implemented, the higher its iREG score.

Source: (OECD, 2018^[2]), Indicators of Regulatory Policy and Governance Surveys 2014 and 2017, <http://oe.cd/ireg>.

The Slovak Republic has some of the lowest scores of all OECD and EU countries in the iREG indicators on *ex post* evaluation. Through the end of 2019, the Slovak Republic had no methodology for *ex post* evaluation, and all systemic reviews focused on reducing administrative burdens. This situation has recently changed as the Ministry of Economy, which in charge of Better Regulation initiatives, rolled out an entirely new system for *ex post* evaluations through the RIA 2020 Strategy in December 2019.

Box 6.2. Overarching principles for reviewing the stock of regulation

- Regulatory policy frameworks should explicitly incorporate *ex post* reviews as an integral and permanent part of the regulatory cycle.
- A sound system for the *ex post* review of regulation would ensure comprehensive coverage of the regulatory stock over time, while “quality controlling” significant reviews and monitoring the operations of the system as a whole.
- Reviews should include an evidence-based assessment of the actual outcomes from regulations against their rationales and objectives, note any lessons and make recommendations to address any performance deficiencies.

Source: (OECD, 2020^[3]), OECD Best Practice Principles for Regulatory Policy: Reviewing the Stock of Regulation, Paris.

Ex post evaluation in the Slovak Republic

Until recently, there was no explicit policy for the *ex post* evaluation of regulations in the Slovak Republic. The Slovak Republic had only conducted formal reviews of rules to reduce their administrative burdens as well as spending reviews. The Ministry of Economy is responsible for the administrative burden reduction programmes.

Fortunately, the Slovak Republic has already committed to change this situation. Under the RIA 2020 Strategy (adopted in January 2018 and described in previous chapters) and the subsequent national project, the Ministry of Economy has elaborated a new methodology (including guidelines) for the *ex post* evaluation of regulations, which was approved in December 2019. A pilot project for every governmental body that produces rules to assess a selected law is planned to be carried out in 2020. Methods used in the pilot testing phase will include the semantic decomposition of legal acts and quantitative scaling of impacts. The methodology will be adjusted based on the results of the pilot testing and presented to the Slovak Government for approval. Otherwise, at the moment, there are no existing obligations to carry out *ex post* evaluation of regulations.

That said, during interviews, the OECD heard several reports of ministries and government bodies directly consulting with stakeholders (particularly businesses) to identify potential issues with the stock of regulations.

The Analytical Units discussed in Chapter 3 and 5 also provide some indirect *ex post* evaluation. For example, the Institute for Financial Policy conducts spending reviews, which often have a component that looks at the impacts and effectiveness of government policies and regulations on outcomes.

As already noted, the goals and objectives for regulations are usually only stated qualitatively in the RIA of regulatory proposals. The lack of clear objectives makes it much harder for ministries to assess whether a law has achieved its objectives or not. Policymakers should consider the expected impacts and how to track them at the beginning of the development process. Furthermore, the purpose of the regulation should be tied directly to the priorities and objectives of the government as a whole, e.g. the objective of a new

law to increase road safety and reduce injuries and deaths would be tied directly to a broader government objective on protecting citizen's health and welfare.

In most cases, the impact of regulations may be tracked through existing government statistical data. The Ministry of Economy and the RIA Commission already provide help to ministries and central government bodies to find relevant data to assess proposed regulations. In some instances, particularly for high impact proposals, policy makers may need to build new indicators or databases to track the implementation and impact of a proposed regulation. Currently, there is no requirement in place to develop new indicators to plan for the review of proposed regulations. However, in some OECD countries, the government has developed frameworks to track the impact of government policies and regulations (Box 6.3).

Box 6.3. Canada's policy on results

The Policy on Results sets out the fundamental requirements for Canadian federal departmental accountability for performance information and evaluation while highlighting the importance of results in management and expenditure decision making, as well as public reporting (Government of Canada, 2016^[4]).

Objectives and expected results: The main objectives of the Policy on Results is to improve the achievement of results across government and enhance the understanding of the results the government seeks to achieve, does achieve, and the resources used to achieve them.

The expected results of the policy are that departments are clear on what they need to achieve and how to achieve it. Departments will receive the resources they need to meet and track their objectives. Finally, the Policy on the Results will improve transparency for parliamentarians and citizens.

Requirements: The Policy on Results requires that ministries and deputy heads of department are responsible for establishing and carrying out a Department Results Framework, under the direction and guidance of Treasury Board Secretariat. The Treasury Board Secretariat may approve changes to frameworks and indicators or may request specific evaluation above standard requirements.

Monitoring and reporting: Deputy heads will be responsible for monitoring their own performance and bringing any issues to the Treasury Board Secretariat. More precisely, they will monitor that their departments undertake necessary evaluations and participate in reviews led by the Treasury Board secretariat.

Source: (Government of Canada, 2016^[4]), Policy on Results, <https://www.tbs-sct.gc.ca/pol/doc-eng.aspx?id=31300>.

Past reviews of the stock of regulation and formalities

The Ministry of Economy has prepared several packages of measures to reduce administrative burdens for the business environment. The measures have come in several successive waves.

In 2007, a national action plan for reducing administrative burdens was adopted in Slovakia to reduce administrative burdens for businesses in 2012 by 25%. The government initiated this program in accordance with the 2007 EU reduction targets. A new reduction target of an additional 25% by the end of 2020 was set in 2016, as part of a package of reforms that included reinforcing the regulatory impact assessment procedure. However, this reform intention is not meant to be an “explicit programme” aimed at reducing administrative burden.

Box 6.4. Reducing administrative burdens in Slovakia 2009-2014

| 1st and 2nd phase (2009-2011) | 3rd phase (2013-14) |
|--|---|
| Covers selected areas of Slovak legislation | Covers all areas of Slovak legislation |
| <ul style="list-style-type: none"> • 72 mapped pieces of legislation • 60 measured pieces of legislation • 400 information obligations measured • EUR 1.26 bln measured AC • EUR 109 mln measured AB • EUR 1.98 bln overall estimated AC • EUR 659 mln overall estimated AB | <ul style="list-style-type: none"> • 1 202 mapped pieces of legislation • 282 measured pieces of legislation • 4 566 information obligations measured • EUR 2.67 bln measured AC • EUR 270 mln measured AB |

Results from the 1st and 2nd phase of measurement were transformed into measures, which were part of the *Government Policy of the Slovak Republic for Improving the Business Environment in the Slovak Republic* (resolution of the Slovak Government No. 486/2011). Implementation of the proposed measures managed to reduce the administrative burden of EUR 79 million, which represents almost 70% of the administrative burden identified during the 1st and 2nd stages of measuring administrative costs in 2009-2011 (EUR 109 million) and approximately 12% of the total estimated administrative burden in Slovakia. Results from the 3rd stage of measurement were also transformed into measures, which were approved by the MoE, but due to disputes with several ministries these measures were not submitted to the Slovak Government for approval.

Source: Information received from the Slovak government.

Since 2016, three packages of measures to reduce administrative burdens for businesses were adopted by the Slovak government. The Ministry of Economy is preparing a fourth. The three packages so far contain almost a hundred measures that reduce administrative burdens by more than 100 million EUR. Ministries and government bodies have already successfully fulfilled more than half of these measures with the Ministry of Economy being responsible for 20 measures, the Ministry of Transport for 16, the Ministry of Finance for 15, the Ministry of Health for 15, the Ministry of Environment for 12 and the Ministry of Labour for 11. The deadline for most of the unfulfilled measures was December 2019. The proposals cover different economic sectors with impacts on the business environment (e.g. taxes, employment, environment, construction, healthcare, central government services, competitiveness, family business support) and also affect different stages of running a business. Measures are meant to save money and time for entrepreneurs. The fourth package is currently being prepared for the inter-ministerial commenting procedure, its adoption has been delayed.

Ex post evaluation in the RIA 2020 Strategy

A central goal of the RIA 2020 Strategy is to establish a system for the *ex post* evaluation of regulations in the Slovak Republic. In December 2019, the Ministry of Economy produced a new *ex post* evaluation methodology to help ministries with their first evaluations of regulations.

The new methodology proposes to make an *ex post* assessment of regulation mandatory within a maximum period of four years from the approval of the regulation. However, the specific date must always be chosen by the ministry, taking into account the content of the legislation under consideration. Ultimately, the ministry will be responsible for the timing of the *ex post* evaluation of the regulation. When planning *ex post* evaluations, they should consider:

- The period between the start of implementation of the legislation and its effects (e.g. where the bill provides for time limits, transitional periods, and other information.),
- The different short-term effects from long-term,
- The possible risk of unintended consequences or obsolescence.

Possible examples that would be high risk include legislation regulating hitherto unregulated area or law governing areas that may rapidly change (e.g. new technologies or business models).

The RIA 2020 Strategy and the new *ex post* evaluation methodology include steps to develop SMART indicators (see Box 6.5) and to ensure that the necessary data is available to evaluators.

Ex post evaluation and parliament in the RIA 2020 Strategy

The new *ex post* evaluation methodology also wisely recommends that ministries re-evaluate the initial RIA before conducting a review, given that the National Council of the Slovak Republic may make significant and unanticipated changes to draft legislation before its implementation. The law or regulation should be evaluated with due consideration of how the parliamentary process affected the outcome and impacts of the legislation. Part of the RIA 2020 Strategy is to support the adoption of RIA and *ex post* evaluation expertise within the parliament. Several OECD countries have dedicated evaluation units in their parliament to review regulations (see Box 6.5). Nine OECD countries indicated that parliaments have a body that is responsible for identifying areas where regulation could be made for effective.

Box 6.5. Parliamentary evaluation and analysis units

Chile: The *Law Evaluation Department* of the Chamber of Deputies provides *ex post* evaluations of regulations. As part of that role it is also responsible for advocating for changes to the regulatory policy framework. The department uses seven criteria to select a law for examination: political neutrality, general applicability of the law, public exposure, methodological feasibility, temporary feasibility, technical feasibility and application time.

European Union: The *Directorate for Impact Assessment and European Added Value* works to strengthen the Parliament's capacity for scrutiny and oversight of the executive at the successive stages of the legislative and policy cycles – from the conception and proposition of EU law and policy to its implementation, enforcement and effectiveness in practice – so contributing to the quality of law-making itself. The Directorate supports parliamentary committees in their work in these fields, notably on European added value, *ex ante* impact assessment and *ex post* evaluation, including in the identification, quantification and justification of parliamentary initiatives, and on the implementation, operation and effectiveness of EU law and policies in practice.

United Kingdom: The *Legislative Scrutiny Unit* in the House of Commons supports committees scrutinising draft bills. It also supports all evidence-taking functions of those committees giving detailed examination to substantive bills as part of the legislative process. The Unit has also assisted select committees in implementing a system of post-legislative scrutiny. The *Secondary Legislation Scrutiny Committee* (SLSC) in the House of Lords examines the policy merits of regulations and other types of secondary legislation that are subject to parliamentary procedure.

Source: (OECD, 2018^[2]), (OECD, 2013^[5]).

At first, the government will test the new *ex post* evaluation methodology through pilot studies that are due by the end of 2020.

At present, the Ministry of Economy is currently deciding on how to establish the oversight of evaluations. The ministry will lead discussions during the *ex post* pilot projects on the six options for oversight as laid out in the recently developed *ex post* evaluation methodology, including the least-preferred “no-control” option. The RIA Commission already oversees RIA in the Slovak Republic, however it could be difficult for the Commission to also supervise *ex post* assessments without additional financial and human resources.

Assessment and recommendations

Until 2019, the Slovak Republic had not yet adopted a formal institutional set-up, methodology, or process for evaluating laws and regulations individually or across sectors. Ex post evaluation efforts focused, like in many countries, on reducing administrative burdens for businesses across the economy. Although these programs were successful, the Slovak Republic did not have any system for evaluating the effectiveness and efficiency of regulation.

The Ministry of Economy, through the RIA 2020 Strategy, now has an ambitious plan to make ex post evaluation a critical aspect of regulatory policy in the Slovak Republic. Already, the Ministry of Economy has developed a methodology based on OECD experience and with due consideration of the local context in the Slovak Republic.

The biggest short term challenge will be for the Ministry of Economy and associated ministries to deliver high-quality pilot projects in ex post evaluation. The pilot studies should be in a critical policy area or sector (e.g. health care) to review all of the relevant regulations and their costs, benefits and effectiveness. The final result should be a series of recommendations to improve both the beneficial effects of the laws and reduce their costs to society.

Over the medium term, the Slovak Republic could think about piloting a regulation under development for review. The pilot ministry would need to find appropriate SMART indicators as part of the RIA to review the result of the regulation after two years. This pilot could help establish a close link between RIA and *ex post* evaluation in the Slovak Republic, incentivising civil servants to carefully develop the policy’s goals and consider the information that will be needed for the later evaluation already at the RIA stage.

The OECD Secretariat makes the following policy recommendations:

- **Capacities for analysis will need to be continuously supported by the government.** Like with RIA, some of the analytical capacities already exist in whole or in part within the AUs of individual departments. However, ministries may find it challenging to do more *ex ante* and *ex post* analysis at the same time.
- **Training for policymakers in evaluation methods will need to be continuous.** The Ministry of Economy will need to continue to build the capacities for analysis in individual ministries for evaluation beyond the guidelines by arranging continuous training opportunities. The AUs could support both *ex ante* and *ex post* evaluation in the Slovak Republic.
- **The Slovak Republic should prepare comprehensive and clear guides and methodologies for different types of ex post evaluations.** The future success of *ex post* evaluation in the Slovak Republic will rely on successful pilots through the RIA 2020 Strategy. These pilots should further be supported by clear guidelines. Different types of *ex post* evaluations could include programmed mechanisms (sun-setting rules, embedded in statute, other post-implementation reviews), ad hoc reviews (public stocktakes, principles-based reviews, benchmarking) and ongoing management types of reviews (stock-flow linkage rules, quantitative red tape reduction targets) (see Box 6.6). The European Commission for example has prepared bespoke guidance for their “fitness checks”.
- Like RIA, **the government should establish an external oversight body that is independent of the ministry that initially produced and reviewed the regulation.** The RIA Commission could

suit this purpose, but it would need to be sufficiently resourced. Alternatively, the creation of a separate commission scrutinizing the quality of *ex post* evaluations could be considered.

- **Policy and spending in ministries should be reviewed together** as it often happens in the IFP in the Ministry of Finance. The evaluation of regulation should not exist in a silo. *Ex post* evaluations should be linked to the government's broader policy goals. Value for money reviews could for example focus also on performance of policies/regulations rather than just spending. The overarching issue tackled in these reviews should be to determine if a policy has delivered on its goals. The financial efficiency aspect should be secondary.

Box 6.6. Approaches to *ex post* evaluation

“Programmed” reviews

- For regulations or laws with potentially important impacts on society or the economy, particularly those containing innovative features or where their effectiveness is uncertain, it is desirable to embed review requirements in the legislative/regulatory framework itself.
- Sunset requirements provide a useful “failsafe” mechanism to ensure the entire stock of subordinate regulation remains fit for purpose over time.
- Post-implementation reviews within a shorter timeframe (1-2 years) are relevant to situations in which an *ex ante* regulatory assessment was deemed inadequate (by an oversight body for example), or a regulation was introduced despite known deficiencies or downside risks.

Ad hoc reviews

- Public “stocktakes” of regulation provide a periodic opportunity to identify current problem areas in specific sectors or the economy as a whole.
- Stocktake-type reviews can also employ a screening criterion or principle to focus on specific performance issues or impacts of concern.
- “In-depth” public reviews are appropriate for major regulatory regimes that involve significant complexities or interactions, or that are highly contentious, or both.
- “Benchmarking” of regulation can be a useful mechanism for identifying improvements based on comparisons with jurisdictions having similar policy frameworks and objectives.

Ongoing stock management

- There need to be mechanisms in place that enable “on the ground” learnings within enforcement bodies about a regulation’s performance to be conveyed as a matter of course to areas of government with policy responsibility.
- Regulatory offset rules (such as one-in one-out) and Burden Reduction Targets or quotas need to include a requirement that regulations slated for removal if still “active”, first undergo some form of assessment as to their worth.
- Review methods should themselves be reviewed periodically to ensure that they too remain fit for purpose.

Source: (OECD, 2020^[3]), OECD Best Practice Principles for Regulatory Policy: Reviewing the Stock of Regulation, Paris.

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