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One-In, X-Out: Regulatory
offsetting in selected OECD
countries

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JEL Classification: K2, K23, F5, F53, F59

* OECD, France



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ONE-IN, X-OUT

Regulatory offsetting in selected OECD countries

Daniel Trnka*, Yola Thuerer*

ABSTRACT

Governments are increasingly trying to limit the costs of regulatory compliance. One of the approaches that has been gaining ground in the last five years is the “one-in, x-out rule”, or the offsetting of regulatory costs stemming from new regulations by reducing the existing regulatory stock. This paper presents examples of regulatory offsetting approaches in selected OECD countries. By comparing the different approaches and discussing their key features, the paper provides guidance to countries considering introducing regulatory offsetting. This paper finds that there are many methodological and implementation issues that need to be resolved before a government decides to use a one-in, x-out approach as part of its regulatory policy. Key suggestions for countries introducing regulatory offsetting include i) ensuring a solid methodology for calculating regulatory costs; ii) linking the responsibility for finding offsets to the “owners” of regulation; iii) setting up quality oversight mechanisms; iv) securing strong political commitment and support and v) implementing regulatory offsetting as a complement to other regulatory management tools.

JEL Classification: K2, K23, F5, F53, F59

Key words: Regulatory policy

* OECD, France

NOTE BY THE SECRETARIAT

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Table of contents

Introduction.....	6
What is regulatory offsetting?.....	7
Building blocks of regulatory offsetting implementation	10
How Is OIXO implemented?	18
Risks related to OIXO approaches.....	22
Impacts of OIXO	24
Conclusions.....	26
Annex.....	28
References.....	29

Introduction

There is a growing perception in a number of countries that regulatory and legislative inflation stifles economic activity. Governments are increasingly trying to limit the flow of regulatory costs stemming from new regulations and reduce the existing regulatory stock. One of the approaches that has been gaining ground in the last five years is offsetting new regulations by reducing existing ones.

The United Kingdom was the first OECD country to formalise such an approach as an official government policy in 2011 with introducing the “One-In, One-Out” policy. Other OECD countries, such as Canada, Spain and Germany, followed in 2012, 2013 and 2015, respectively. Canada was the first country to actually legislate regulatory offsetting. More recently, Korea, USA and Mexico introduced their versions of regulatory offsetting. Such an approach has also been recently introduced in France.¹ Australia implemented and later abandoned it. Finland has just completed a pilot project testing a one-in, one-out policy. Other countries might, at present, be experimenting with regulatory offsetting through pilot testing or considering its introduction in the near future.

The offsetting approach has its roots in setting net quantitative targets for reducing administrative (or, later, compliance/regulatory) costs. This was pioneered in the Netherlands in the 1990s with the introduction of a method to quantify administrative burdens in monetary terms - the Standard Cost Model – accompanied by a government commitment to reduce administrative burdens by 25% within five years (OECD, 2010). Many European governments, starting with Denmark, the United Kingdom and the Czech Republic, turned to the SCM as a pragmatic alternative to the more ambitious, but less easy to implement (and communicate) *ex ante* regulatory impact analysis (Boeheim, et al., 2006). Some other countries, such as Lithuania, have introduced a cap on administrative burdens, a zero-growth policy regarding administrative/regulatory costs, or regulatory cost moratoria (OECD, 2015). These might fall into the category of regulatory offsetting as they clearly link the flow of new regulations to reducing the stock.

One of the goals of this paper is to provide a comparison of various approaches to regulatory offsetting implemented in some of the above-mentioned countries. In examining these approaches, the paper finds that there are significant differences among them and in the way these are implemented in individual countries.

Besides summarising these differences, the paper also provides guidance to those countries considering introducing regulatory offsetting in the future. At first sight, regulatory offsetting might seem rather straightforward, however, when digging deeper, one will discover that there are many methodological and implementation issues that need to be solved before a government decides to use such an approach as part of its regulatory policy.

This paper does not intend to provide any evaluation of the usefulness or suitability of regulatory offsetting. While some arguments for and against such an approach was discussed, no conclusions are drawn in this sense. It is also too early in most of the countries to evaluate whether regulatory offsetting has achieved its goals, since many countries started implementing it less than two years ago.

¹ Circulaire du 17 juillet 2013 relative à la mise en œuvre du gel de la réglementation and Circulaire du 26 juillet 2017 relative à la maîtrise du flux des textes réglementaires et de leur impact.

The paper looks mostly on the following countries: Canada, Germany, Korea, UK and USA. Examples from some other countries are also mentioned where appropriate.

The paper is based on desk research and study of available government documents and academic papers related to the subject of regulatory offsetting. The publications by R. Deighton-Smith (2011) and N. Malyshev (2010) were of particular relevance for this paper. In addition, interviews with government representatives from some countries that have implemented regulatory offsetting as well as informal discussions with academics and experts took place while developing this paper.

What is regulatory offsetting?

Attempts to control the overall amount of regulatory costs caused by government regulations exist in most OECD countries. While the core idea of regulatory policy as promoted by the OECD has always been based on juxtaposing costs and benefits stemming from regulations in order to reach a conclusion as to the desirability of regulation, many OECD countries have added other regulatory management tools and techniques focusing on measuring and reducing regulatory costs in isolation. The most commonly advanced rationale for limiting regulatory costs lies in the alleged negative correlation between these costs (as a proportion of GDP) and economic performance, measured in terms of key indicators such as economic and employment growth. (Deighton-Smith, Rules for Regulatory Expenditures, 2011)

The benefit of adopting some rules to cap regulatory costs is that these rules require regulators to optimise across regulatory choices. It imposes a discipline on regulators, which, presumably, leads regulators and legislators to choose more efficient and effective regulation and discard other regulation in order to meet a cost cap (or a cap on incremental costs). This optimisation argument is frequently presented in terms of an analogy with public budgeting disciplines: it is argued that increasingly sophisticated public budgeting tools have been developed over many decades in order to enhance the transparency and accountability of governments for their taxing and spending behaviours. Regulation is said to be conceptually equivalent, in that it requires regulated parties to act in ways other than private interest would suggest, in the interests of achieving identified public goals. (Deighton-Smith, Rules for Regulatory Expenditures, 2011) (Malyshev, 2010)

The one-in, one-out rule, in its simplest form, proposes that individual regulatory agencies should not be able to adopt a new regulation without simultaneously abolishing an existing regulation. The result would clearly be that there would be no net increase in the overall number of regulations on the statute book. The key rationale of one-in one-out, as with the regulatory budget concept, is that regulation would no longer be a "free good" and regulators would, instead, be forced to optimise regulatory choices, trading off between different possibilities. (Deighton-Smith, Rules for Regulatory Expenditures, 2011)

However, it is evident that all regulations are not equal. Implementing this simple variant of regulatory offsetting might lead to a situation where significant and costly new regulations would be potentially offset by repealing much less significant regulations from the statute book. At a more sophisticated level, the opportunity exists in many cases for regulators to combine different regulations into one instrument, thereby evading a rule based on a simple count of such instruments. These factors mean that the practical effectiveness of this rule in limiting regulatory costs is doubtful, even though it might lead at least to clearing the statute books of obsolete regulations.

Therefore, all of the countries in the scope of this study have implemented a more sophisticated approach, where the offsetting value is calculated based on the actual amount of incremental regulatory costs, or their subcategory, stemming from the newly drafted regulation. The US approach still sets the obligation that each agency shall, unless prohibited by law, revise or repeal two existing regulations for every new federal regulation that imposes costs, and also ensure that the total incremental regulatory cost in dollar value of all new regulations, including revised or repealed regulations, should be no greater than zero.² To make the distinction between offsetting the number of regulations and regulatory costs even more visible, Korea calls its approach “Cost-In, Cost-Out”.

In Canada, the “One for One” rule requires departments and agencies to:

- Offset new administrative burden costs imposed on business as a result of a regulatory change by removing an equal amount of administrative burden costs from their existing stock of regulations; and
- Remove an existing regulation every time a new one imposing new administrative burden costs on business is enacted.

A similar rule has been introduced on the sub-national level by the Ontario government with the “Reducing Regulatory Costs for Business” Act in 2017.

France introduced a moratorium on new regulations with the “*gel de la réglementation*” in 2013. Similar to the “One for One” rule, departments are required to both offset the increase in costs to businesses and to remove (or, if not possible, simplify) an existing regulation when a new one is enacted, with the difference that also costs to local governments and citizens are considered. The rule was then extended into the two-for-one policy “*maîtrise du flux des textes réglementaires*” put in place under the Macron government in 2017. The offsetting obligation was doubled with the intent to impose greater control of the flow of regulatory texts on the different ministerial departments, because the original approach had not achieved the desired results. (Gouvernement de la République Française, 2017) (Gouvernement de la République Française, 2013)

Some of the countries (Germany, Korea) decided to opt for simple "one for one" offsetting - an increase of regulatory costs (or their subcategory, e.g. administrative costs for businesses) by a certain amount must be offset by a reduction of an equivalent value of costs.

In the UK, this was also the original approach when the rule was introduced through a Coalition Agreement of the Cameron Government in autumn 2010. The programme was deemed so successful and in recognition of increased political ambition the Government decided to go further and double the offsetting by introducing the "One-In, Two-Out" approach (Holl, 2015). In 2015, the approach was even strengthened and every pound of newly created regulatory costs had to be offset by a reduction of 3 pounds ("One-In, Three-Out"). It was set not as a goal itself but as a tool to achieve the Business Impact Target of reducing regulatory costs for businesses by 10 billion GBP during the five-year term of that Parliament, which had been expected to end in 2020. Regulatory offsetting in the UK has been discontinued in the 2017 Parliament with the focus now on promoting more efficient regulation, backed by high-quality evidence, and supporting transparency and accountability for the costs and benefits of regulation to business and wider society.

² The offsetting mechanism is discussed in more detail further below.

Contrary to the UK example, Mexico eased its offsetting obligations over time. A year after the introduction of the presidential decree “2x1” in 2017, the approach was changed to a simple “one for one” policy by the law on regulatory improvement (Congreso general de los Estados Unidos Mexicanos, 2018). The rule requires departments and agencies to offset an increase in direct compliance costs to individuals caused by a newly introduced regulation by repealing one regulation from the same economic sector with an equivalent value of costs.

The "One-for-One" Rule was introduced in Canada in April 2012 based on the Red Tape Reduction Commission’s Recommendation Report (Red Tape Reduction Commission, 2012). Originally the “One-for-One” Rule was introduced as policy in the requirements of the Cabinet Directive on Regulatory Management. Three years later the Rule became law when the Red Tape Reduction Act was proclaimed on April 23, 2015. An overview of the Canadian approach is provided by Figure 1 in the Annex. The Red Tape Reduction Act includes a clause that requires a review of the Act to be performed by the President of the Treasury Board in 2020, five years after it became law.

In Germany, the "one-in, one-out" rule was introduced by the Government through its decision in 2015 as part of its "Bureaucracy Reduction and Better Regulation" agenda. With the start of the programme in 2006, the German Government set a goal “to cut measurably the costs of bureaucracy ... and to avoid new information obligations.” A first version of an administrative cost cap was introduced by the decision of the council of ministers on 27 January 2010. While the concept of measuring compliance costs was adopted in 2011, the council of ministers stated in June 2014 that the Government’s “aim is to reduce the existing compliance costs” (National Regulatory Control Council, 2016). Thus the “one-in, one-out” could be primarily understood as a tool to implement and enforce earlier decisions more specifically.

On the sub-national level, the state of Bavaria introduced the simplest variant of regulatory offsetting, the one-in, one-out rule “Paragraphenbremse”, stipulating that every section introduced will have to be offset by simultaneously abolishing an existing one.

In Spain, law 14/2013 on “the support for entrepreneurs and their internationalization” introduced a one-in, one-out principle for administrative burdens for businesses: “When public administrations create new administrative burdens for companies, at least one existing burden of equivalent cost will be eliminated”. A Council of Ministers Agreement in 2015 laid down measures to strengthen the monitoring of the principle.

The Danish government put in place a one-in, one-out mechanism as part of its burden-stop on business regulation programme in 2015. The burden-stop means no new legislation with burdens for business above certain thresholds³ can be introduced. Legislation exempted from the burden-stop includes minimum implementation of international or EU legislation; legislation that is part of a larger agreement with the business community as well as health and safety regulation. The latter is subject to the one-in, one-out mechanism.

³ The thresholds are four million DKK (approx. 530 000 €) for administrative costs and 10 million DKK (approx. 1.3 million €) for additional direct compliance costs. In case of burdens below these thresholds, but above 100 000 DKK (approx. 13 000 €) on average per company, exemptions must be approved by the government’s Committee on Economic Affairs. For burdens below these thresholds, the line ministries have to keep track of their introduced burdens and make sure that equivalent simplifications are introduced to the same business sectors in due course.

In Korea, the CICO obligation entered into full force in 2016 after two years of pilot testing through a government ordinance (OECD, 2017). In the USA, a commitment to “a requirement that for every new federal regulation, two existing regulations need to be eliminated” was made during Donald Trump’s election campaign. This commitment was later formalised through the presidential Executive Order 13771 (EO 13771) on “Reducing Regulation and Controlling Regulatory Costs”.

In Finland, the Ministry of Economic Affairs and Employment (MEAE) and the Ministry of Agriculture and Forestry (MAF) pilot tested the application of a one-in, one-out policy in 2017. The objective was to create a measurement system for the Finnish Government’s Key project “Streamlined legal provisions”. In the MEAE, the principle was applied to all primary legislation being prepared during 2017 and in the MAF, the principle was tested with the preparation of the Food Act reform (Finnish Ministry of Economic Affairs and Employment, 2017). Finland envisages continuing and expanding the pilot testing.

As described above, the US approach is slightly different, since an agency's total incremental regulatory costs have to be fully offset (which would seem to be a "one-in, one-out" approach), however, this offset also means taking at least two deregulatory actions per one regulatory action (which is why the approach is sometimes called "two-for-one" or "one-in, two-out").⁴ (Renda, 2017)

Given the differences in various countries' approaches, we decided to use a general term "one-in, x-out" or OIXO to use just one label for different approaches described in the paper.

Building blocks of regulatory offsetting implementation

Looking only at the names of the offsetting programmes in various countries, one would think that these approaches are rather similar. However, when digging deeper, we find a surprising number of differences in their implementation, relating to the scope of implementation, scope of offsetting, institutional and co-ordination mechanisms involved in the implementation, etc. At the same time, there are many questions all administrations trying to introduce a regulatory offsetting approach have to answer before the implementation can start. This section discusses these methodological issues and the methods countries are using to tackle them.

What needs to be offset?

The first important issue is the scope of application of regulatory offsetting, in other words, which new regulations have to be offset according to the approach used. The answer depends on the priorities of the government but also on the regulatory regime and administrative culture in the given country. A country might decide that only primary legislation falls into the scope of the programme, or include also secondary legislation and other regulations including ministerial decrees or government circulars.

There are obviously trade-offs in the workload and the level of resources that need to be invested to the programme depending on the scope of its application. The greater proposed

⁴ Besides, the US approach includes a regulatory budgeting component, based on which from 2018 onwards the Office of Management and Budget will attribute specific incremental cost allowances to each federal agency, with a view to reaching an overall target for the reduction of incremental costs, which can change every year.

scope of regulations that need to be offset, the greater the possibility for reducing regulatory burden, but also the greater the amount of additional analyses required to assess what offset is needed and then generate that offset within a reasonable time period.

All of the reviewed countries decided to include regulations issued by the executive to the scope of the offsetting programme, in some cases with significant exemptions (see below). Thus, in the USA every "significant regulatory action as defined in Section 3(f) of EO 12866 that has been finalized and that imposes total costs greater than zero"⁵ and also all "significant guidance documents" imposing regulatory costs must be offset (OMB, 2017).

In Canada, all federal regulations are generally included.⁶ In Germany, all federal primary laws and regulations and in the UK, France and Korea all national laws and regulations are included. In Finland, the pilot project was applied to legislation of national origin or legislation exceeding the EU minimum regulation, but not to labour legislation drafted on a tripartite basis. In all of these countries except the USA and France, only costs imposed on businesses (and voluntary organisations in the UK) have to be offset (see below). To be more precise, Korea includes all "newly introduced or reinforced regulations by 27 central administrative agencies that generate direct costs for profit-seeking activities of any individual or business".

At the same time, all of these countries allow that some of the regulations that fall into the scope of the offsetting programme are exempted from the offsetting obligation. The scope of these exemptions differs. The most significant exemptions probably exist in the UK, Germany and Spain where regulations implementing the EU legislation are excluded from the offsetting obligation.⁷ This is quite a significant amount of regulations; some estimates say that in the EU Member States, the European law might be responsible for approximately 50% of the overall level of regulatory burdens.

In the USA, the following regulatory actions "may qualify for a full or partial exemption": 1) expressly exempt actions; 2) emergency actions; 3) statutorily or judicially required actions; and 4) *de minimis* actions. These categories are not exhaustive. For any EO 13771 regulatory action an agency believes qualifies for an exemption under any of the circumstances listed above, agencies should "submit exemption requests to OIRA prior to submitting the action to OMB." (OMB, 2017)

⁵ These are regulations that have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities (also termed "economically significant regulations"); and regulations that create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive order. Importantly, under Executive Order 12866, OIRA is responsible for determining which agency regulatory actions are "significant" and, in turn, subject to interagency review.

⁶ In both the US and Canada, this means that primary legislation issued by the legislative branch of the government is not included.

⁷ Nevertheless, costs of the implementation of the EU legislation are publicly available in Germany.

In Korea, the following cases are exempted from the CICO programme⁸:

- Regulations necessary for dealing with national crisis or emergency;
- Regulations required to implement treaties or international agreements;
- Regulations directly related to maintenance of order or public life and safety;
- Regulations necessary for preventing financial crisis, securing financial stability, dealing with environmental crisis, and fostering fair competition;
- Regulations associated with administrative fees, administrative actions or administrative sanctions;
- Regulations that are sunseting within 1 year.

This means, that approximately 72% of new regulations established during the pilot project were subject to the exemption of application (OECD, 2017).

Canada's "One-for-One" rule applies to all regulatory changes that impose new administrative burden costs on business. However, exemptions can be granted in three circumstances:

- Regulations related to tax or tax administration are carved out from the application of the rule.
- Regulations that implement non-discretionary obligations: This exemption applies to regulations that implement obligations for which there is no discretion with regard to the manner in which they can be designed and administered.
- Emergencies and crisis situations or other unique, exceptional circumstances.

In France, the "*maîtrise du flux des textes réglementaires*" applies to all national regulations, decrees and circulars. Not included in this framework are draft decrees that are by nature without impact on the administrative burden of civil society (eg. statutory provisions applicable to state employees and provisions of a budgetary nature) as well as the decrees issued to accompany a new law or regulation in order to condition their entry into force.

In Spain, the following regulations are exempt from the one-in, one-out rule:

- Regulations transposing EU legislation or international agreements into national law;
- Regulations concerning civil emergencies;
- Regulations containing measures to prevent financial risk, contain inflation, regulate taxes and fees, fines and penalties and social security contributions;
- Regulations with temporary validity (especially those with an annual term).

Mexico's "*decreto 1x1*" generally applies to all national regulations imposing direct compliance costs to individuals. However, the following regulations can be exempt from the rule:

⁸ According to Ordinance of the Prime Minister No.669

- Regulations that address an emergency situation, provided that they have a validity of no more than six months, seek to avoid imminent damage or mitigate existing damage, and an act with equivalent content has not previously been issued;
- New regulations issued in order to comply with an obligation established by national law or international commitments;
- Regulations with automatic sunset or evaluation clauses;
- Regulations providing benefits to society that are greater than the compliance costs to individuals.

Program operation rules that are issued in accordance with the Federation Expenditures Budget for the corresponding fiscal year.

As a result, almost 80% of new regulations in Mexico were exempt from the application of the “*decreto 2x1*” in 2017. (Comisión Federal de Mejora Regulatoria, 2017)

The Finnish pilot project of their one-in, one-out policy excluded tax legislation; fines and penalties; emergency legislation resulting from exceptional circumstances or for the purpose of averting danger; regulations with the purpose to open markets to competition; to promote competition and to prevent the abuse of monopoly power. (Finnish Ministry of Economic Affairs and Employment, 2017)

Regulations that are reacting to some kind of emergency must be obviously exempt from offsetting. The mechanism of who decides in what way what constitutes an emergency has to be clearly defined and strict enough so these exemptions are not used too frequently or in unjustified cases. Countries might want to set obligations for an *ex post* review of regulations which are adopted through this special procedure.

Parts of government covered

In some countries, what types of administrative bodies are covered by the offsetting obligation is also important. In all reviewed countries, only the central (national, federal) level of government is covered. As mentioned before, legislation issued by national Parliaments is universally excluded. This exclusion, however, might represent a significant proportion of regulations in some countries. Also, some legislation drafted by the executive might be significantly changed in the parliamentary process. This might create disproportions in the total change of regulatory burdens which might grow despite the existence of the offsetting programme at the level of the executive.⁹

Another important part of the executive that might be excluded from the offsetting obligations are independent agencies or regulators. In the UK, regulators were excluded from OIOO/OI2O, although they are now included in the Business Impact Target (introduced by the 2016 Enterprise Act). Also in the US, independent agencies are not a subject to the Executive Order, however, they were invited to offset their regulations as well.

⁹ For example in Germany, approx. 89% of primary laws are initiated by the executive (average 2014-2016), see OECD (2018). However, the Bundestag amends many of these legislative drafts.

When to offset?

When implementing regulatory offset programmes, governments have to decide on the timing, i.e. with what delay (of any) the offsetting actually has to take place after a new regulation is drafted. The simplest approach is to offset at the same time when introducing new regulations. However, changing regulations takes as much time as introducing new ones and when abolishing or amending regulations (or their parts), administrations have to go through the same procedures as when introducing new ones. Therefore, some of the reviewed countries give regulators extra time for finding offsets after a new regulation is approved. Avoiding undue delay might be useful in the promulgation of new, “needed” regulations. Though, when the offsetting period is too long, the relief provided to the regulated subjects could be less significant. Also, it might become more difficult to enforce the offsetting obligation after a long period of time, especially if the government changes in the meantime and new ministers do not feel committed by the obligations imposed on the previous ones.

In the USA, the agency should identify all deregulatory actions, along with cost savings estimates, by the time it submits to OMB for review the corresponding regulatory action. “To the extent practicable, agencies should issue EO 13771 deregulatory actions before or concurrently with the EO 13771 regulatory actions they are intended to offset” (OMB, 2017). In Canada, on the other hand, commitments to offset administrative burden cost or repeal a regulation need to be satisfied within 24 months of the registration of the regulation that triggered them.

In Germany, new regulations should be offset within a year’s time. In the UK, the co-ordinating body urged ministries to offset new regulations “as quickly as possible” offering a “fast track” process for some deregulatory measures.¹⁰ Agencies in the UK were expected to adequately offset all new regulations within each Parliament's five years term.

In Mexico, departments and agencies must indicate the regulation that will be repealed in the preliminary draft of the new regulation and must demonstrate that this rule refers to the same regulated economic sector as the regulation being introduced. (Estados Unidos Mexicanos, 2017)

In Spain, each ministry reports an estimation of the expected increase of administrative burden to the Ministry of Territorial Policy and Public Service. Those ministries that have globally increased burdens for businesses by the end of the year should identify sources of burdens for deregulatory actions within the following year.

In Korea, when introducing or amending a regulation that falls under the scheme of CICO, the responsible agency is required to identify an existing regulation that can be abolished or relaxed as a means to offset the costs of the new regulation. If simultaneous review is deemed not plausible, the responsible agency is required to abolish or relax an existing regulation within one year from the time of introducing the new regulation. The annual evaluation of ministries’ performance is supposed to incentivise compliance within each year.

¹⁰ When the “fast track” measure was implemented, the processes that had to be followed for deregulatory measures were simpler and only required a single scrutiny of the Impact Assessment by the independent validation body.

Banking and Trading

The timing of offsetting is closely connected with the issue of “banking” and “trading”. “Banking” refers to the practice of keeping reductions of regulatory costs as a surplus which later can be used to compensate increases of regulatory costs stemming from newly adopted regulations. This practice helps to avoid delays in offsetting. At the same time, some critiques of this approach point to the fact that by large reductions of regulatory burdens through certain reforms, administrations might feel that these reductions create an “excuse” for a series of small, incremental increases stemming from some, non-related regulatory actions.

In the USA, agencies may bank both deregulatory actions and the associated cost savings for use in the same or a subsequent fiscal year towards the requirement to identify at least two existing regulations to be repealed and to comply with the total incremental cost allowance. In Canada, banking of surplus offsets is allowed in perpetuity. Banking is in general allowed also in Korea, Germany (only until the end of the given legislative period of the *Bundestag*) as well as the UK.

Inevitably, for some ministries or agencies it might be more difficult to find potential offsets than for others, especially if the 'X' in OIXO is higher than 1. This might be either because a given agency is responsible for an area with a limited number of regulations or, because the regulations in the agency's area of competence are deemed as important and it is not possible to abolish them without creating controversy. At the same time, significant reductions of regulatory costs stemming from a reform in a competence of one agency might create a surplus that does not have to be necessarily 'used' by the same agency but can be (or its part) used as an 'out' by other parts of the administration. This approach is called “trading” of offsets.

In Korea, trading is not allowed and the agency increasing regulatory costs is itself responsible also for finding necessary offsets.

Canada's offset system is portfolio based. For both elements of the rule, ministers can draw 'outs' from across their entire portfolio. A portfolio approach provides ministers with flexibility to meet the requirements of the rule and help to ensure that smaller agencies within portfolios can comply with the Rule. The monitoring and tracking of 'ins' and 'outs' is done on both a department and portfolio basis to ensure that administrative burden is calculated and accounted for.

In Germany, if there is a political will to regulate, but no chance at all to find an offset in the lead ministry's portfolio, the ministry can ask the steering group of state secretaries (representing all ministries) for a relief. It needs to present a formal opinion of the Regulatory Control Council approving, that compensation is by no means possible. Since the implementation of one-in, one-out in 2015, none of the ministries has actually used this option.

In general, allowing banking and trading, especially when combined, might make it less difficult for institutions to offset newly created regulatory costs. It almost limits the danger of one ministry or agency 'going bankrupt', i.e. needing to regulate but not being able to find appropriate offsets. However, it also might create incentives for one ministry/agency to use certain deregulatory actions introduced by a different ministry/agency delivering significant costs reductions as an excuse for creating additional regulatory burdens. This also lessens the incentives for individual ministries and agencies to find redundancies or efficiencies within their own regulatory portfolios. In some countries, such as Germany, OIXO is actually used as a tool underlining sectoral responsibility of line ministries.

More generally, banking and trading potentially weakens the disciplines that OIXO aims to impose within the administration. Therefore, co-ordination and strong discipline is crucial and trading is mostly not allowed explicitly as a general rule, though it might be used by the co-ordinating body to achieve the OIXO goal by the government as such.

What-In for What-Out?

Probably the most important issue governments have to decide on when implementing regulatory offsetting is the questions of the metric that is going to be used - in other words - what in for what out.

As said before, the "one-in, one-out" rule, in its simplest form, would propose that individual agencies should not be able to adopt a new regulation without simultaneously abolishing an existing regulation. However, using such metric would not say anything about the actual impact offsetting would have on regulated subjects. A new regulation causing significant new regulatory costs could be offset by eliminating two regulations with insignificant impacts on the regulatees. In total, this would still result in an increase of regulatory costs. This is why most countries use regulatory costs or their subgroup, namely administrative costs, as the main metric for regulatory offsetting.

USA combines the two approaches. While the total increase in incremental "opportunity costs" (see below) has to be fully offset, agencies must also take at least two separate deregulatory actions per regulatory action. All other examined countries focus exclusively on incremental costs. However, there are differences in what types of costs are calculated for the sake of regulatory offsetting.

In Canada, direct administrative costs (burdens) on businesses are subject to offsetting. The Red Tape Reduction Act defines administrative burden as "anything that is necessary to demonstrate compliance with a regulation, including the collecting, processing, reporting and retaining of information and the completing of forms".

Spain also uses direct administrative costs on businesses as a metric for regulatory offsetting. These costs are measured as part of the RIA process using a modified version of the Standard Cost Model called "Simplified Model".

Administrative costs form only a relatively small proportion of the overall compliance costs (OECD, 2014). Therefore, countries such as Germany or the UK decided to offset all direct compliance costs for businesses (and voluntary organisations in the UK). However, in Germany only continuous compliance costs are included and not the one-off costs. In Korea, the approach is to focus on "net direct costs" imposed by new regulations on businesses and individual entrepreneurs.

The US approach is unique also in another aspect. While other countries mostly focus only on costs on businesses and do not take into account indirect costs, the US approach takes into account all opportunity costs to society. These costs should be calculated based on the OMB Circular A-4 which is also used in calculating impacts as part of the regulatory impact assessment (RIA) process. According to OMB Circular A-4, "opportunity costs" is the appropriate concept for valuing both benefits and costs (Office of Management and Budget, 2003).

This approach makes the offsetting better connected to the RIA process, however, calculating all opportunity costs might be time-consuming, costly and dependant based on a number of numerical assumptions and choosing appropriate (econometrical) models. Moreover, according to former OIRA administrator Susan Dudley, "understanding the full

social costs of a regulation is difficult, if not impossible; and some regulatory impacts will be harder to estimate than others. What are the costs associated with homeland security measures that infringe upon airline travellers' privacy? What are the costs of regulations that prevent a promising, but yet unknown, product from reaching consumers?" (Dudley, 2016)

Defining the categories of costs that will be taken into account is crucial from the point of view of capacities needed for implementing the programme and for the comprehensibility of the calculation to decision makers and public. This definition also depends on the priorities of the government. Focusing only on the cost of paperwork - the administrative costs - might significantly simplify the process. Administrative costs are also relatively easier to be measured, for examples using the internationally recognised Standard Cost Model. At the same time, administrative costs are only a small proportion of the overall regulatory/compliance costs (OECD, 2010). Such an approach could also create perverse incentives. Regulatory options that favour the disclosure of information in lieu of more stringent constraints (e.g., a requirement to list a potentially harmful ingredient on a product label vs. banning the ingredient) can be much less economically disruptive and is preferred as a regulatory alternative although they create information obligations and increase, contrary to the complete ban, administrative burdens. Ignoring other regulatory costs would encourage regulators to adopt potentially more, not less, burdensome rules, especially, if regulators are responsible for finding the offset for their own new rule. (Peacock, 2016)

According to Peacock, this perverse incentive does not seem to have, as yet, happened in other countries where there has been a great deal of focus on reducing paperwork burden. A review of regulatory changes in Canada and the United Kingdom, for instance, shows that most offsets exploit new information technology (e.g. replace more burdensome hard copy forms with electronic submission) and/or regulatory simplification (such as redesigning forms, reducing the amount of data collected on a form, changing reporting or inspection frequency, etc.). There appear to be many opportunities for such improvements and they can be "powerful – because they reduce costs for business while maintaining protections."

Calculating direct compliance costs needs more time and also a robust methodology. Such methodologies have existed for quite a long time in the UK and more recently also in Germany, therefore it is a logical step for these countries to focus on this wider category of cost.

With the exception of the USA, all examined countries calculate only direct costs, not the indirect ones. Direct costs can be defined as the costs of undertaking activities specifically mandated by the regulations, while indirect costs can be defined as the costs associated with behavioural changes prompted by the regulations. (OECD, 2014)

Similar to just measuring administrative costs, measuring direct costs could cause a distortion in regulatory policies resulting in the selection of regulatory alternatives that have lower direct compliance costs but higher costs overall. For instance, banning certain substances or activities typically has lower direct compliance costs, but much higher indirect costs, than attempting to regulate the use of a substance or an activity by, say, setting performance standards. (Peacock, 2016)

Nevertheless, as some of the interviewees mentioned, it would make the process "extremely complicated" if indirect costs had to be calculated. In other words, "ministries would not know where to stop when finding more and more potential indirect costs for the society."

A majority of the countries also focus solely on costs imposed on businesses. This is most likely the result of the fact that regulatory offsetting is part of government agendas trying to stimulate economic growth. At the same time, this might (and indeed in some countries it did) cause criticism arguing that such reforms are too much pro-business oriented and that they will lead to undermining the goals of regulations, such as protecting the environment, health of citizens or security (Slesinger & Weissman, 2017) (Aldy, 2017).

Whether to calculate forgone benefits as costs stemming from deregulatory actions is another important question. Because some rules may result in both direct costs and direct benefits to businesses, the UK nets these out. Assuming the costs are greater than the benefits, the United Kingdom would subtract the direct benefits from the direct costs to determine the direct net cost that would need to be offset. Germany has decided to calculate costs separate from benefits, as the value given to certain types of benefits depends very much on the (political) point of view. While costs could be more easily calculated quantitatively, benefits are usually described qualitatively.

The US approach of taking into account all opportunity costs to society seems to be the most complex among the examined countries. At the same time, the methodology for calculating regulatory costs (and benefits) in the USA is one of the most developed ones. It will be interesting to see how this approach will work in practice and how cumbersome the analyses will be for government agencies.

How Is OIXO implemented?

While the methodological issues described above are of extreme importance for the functioning of the OIXO approaches in individual countries, the questions of implementation and governance of such projects are nonetheless important and have to be answered before an OIXO approach is introduced.

It has been already mentioned that implementing OIXO can be resource demanding and can impose significant burden on regulating ministers and agencies. One must not forget that when removing regulations, the administration has to go through the same procedures as when introducing new ones. In theory, in countries such as the USA or the UK where an obligation to evaluate costs and benefits on new regulations already exists, the amount of work spent on RIA might double for every new regulation being subject to one-in, one out, triple in case of one-in, two out approach and quadruple for one-in, three-out. One might argue that in case of 'outs', there is no need to evaluate different alternatives and also that *ex post* analysis might be easier than the *ex ante* one. Still, the additional workload is not negligible.

Some critiques of the OIXO approach also mention the potential squeezing out effect - resources spend on analysing costs and their reduction of new regulations and removed regulations might use a big chunk of analytical capacities of government agencies that might have been used on improving, for example, regulatory impact assessment.

Gradual implementation

One of the options for handling the increased workload would be to implement the OIXO approach gradually, in phases. With the exception of Korea and Finland, all reviewed countries started with full implementation, though the UK started with the one-in one-out in 2010, after three years increased the number of 'outs' to two and in 2015 moved to a Business Impact Target supported by a one-in, three-out approach.

In Korea, pilot testing of their CICO programme started in July 2014 during which 15 ministries analysed and abolished (or relaxed) 28 existing regulations together in exchange for 24 newly-introduced ones and only in July 2016 it was introduced in full force covering 27 agencies in total. In Canada, the One-for-One Rule was initially introduced as a regulatory policy 3 years prior to it becoming a law. During the initial policy phase, most ministries had accumulated surplus balances that were carried forward for use against future commitments created under the One-for-One rule as a law.

Another approach to incremental implementation would be to start with a more narrow scope of implementation, for example on regulations with the most significant impacts. The USA approach now only covers new regulatory actions that are economically significant (typically rules that have an effect on the economy of 100 million USD or more). Widening of the scope, however, is not foreseen at this stage.

Other possibility would be to limit the category of burdens that would be measured as part of OIXO. For example, countries could start with measuring only administrative costs and later widen the scope to all direct compliance costs or even the indirect ones. This might make reporting on progress of the approach and setting quantitative targets more difficult. None of the examined countries used such an approach.

Germany based its OIOO rule on the already existing procedures for calculating compliance costs *ex ante*. Therefore, the additional workload stemming from implementing the OIOO rule was limited to calculating and monitoring the OIOO-balance sheet.

It seems that most countries prefer to implement an OIXO process in one shot. That being said, for other countries in the future, some pilot testing might be useful. Targeting of OIXO on regulations with the most significant impacts or narrowing the scope of the programme might be advisable for limiting financial resources and human capacities needed for OIXO implementation.

Financing

Speaking of financial resources, none of the interviewed countries dedicated any specific financial resources to implementing OIXO programmes. Mostly, ministries and agencies were expected to meet the additional requirement using the existing financial and human resources. To provide technical support for the review process of CICO in Korea, regulatory research centres have been established under the Korea Development Institute (KDI) and Korea Institute of Public Administration (KIPA). Substantive training was also provided to civil servants. The regulatory research centres provide regulatory consulting sessions. For instance, KIPA conducted 5 training sessions in 2014 and 20 sessions in 2015. In addition, the Regulatory Reform Office (RRO), KDI, and KIPA jointly provided 18 training sessions on CICO between July 2014 and March 2016.

Governance and co-ordination of OIXO

Governments should also consider how the OIXO process is governed and the offsetting obligation enforced. Well-functioning institutional structures for co-ordinating the process must be established, or - in case there is already an institutional set up for co-ordinating other regulatory policies such as RIA - used and their competences strengthened and adjusted.

In the USA, it is the Office for Information and Regulatory Affairs (OIRA)¹¹ that is responsible for co-ordinating and providing oversight on implementation of the EO 13777. OIRA is the United States Government's central authority for the review of Executive Branch regulations, approval of Government information collections, establishment of Government statistical practices, and coordination of federal privacy policy.

The Treasury Board of Canada Secretariat (TBS) - the government's central regulatory oversight body¹² - is responsible for the coordination of the process around the one-for-one rule. It establishes policies and guidance to assist regulatory departments and agencies when developing regulatory proposals, and provides oversight of the quality of estimates of administrative costs.

In Mexico, the Comisión Nacional de Mejora Regulatoria (CONAMER) is responsible for overseeing the implementation of the 1x1 rule and for this purpose monitors the offsetting of compliance costs for individuals following the introduction of a new regulation (Estados Unidos Mexicanos, 2017). CONAMER is the national government's body in charge of better regulation efforts with core functions such as the coordination of the regulatory planning agenda, the promotion of simplification programmes and the review of the existing stock of regulations.

In France, the General Secretariat of the Government is responsible for ensuring department's and agencies' compliance with the one-in, two-out policy. The Secretariat submits the draft decrees containing the new rule and the proposed simplification measures to the arbitration of the presidential cabinet. The cabinet then decides whether to continue, modify or abandon the draft regulation (Gouvernement de la République Française, 2017).

In Germany, the State Secretary Committee for Bureaucracy Reduction reporting to the Minister of State with the Federal Chancellor co-ordinates and oversees the process. In addition, the National Regulatory Control Council (NKR)¹³, an independent advisory body to the Government, verifies the quality of cost estimations provided by ministries, therefore provides an independent oversight. The Council had existed before the one-in, one-out project was implemented and has other competences as part of the German Government's "Bureaucracy Reduction and Better Regulation" programme. (Federal Government of Germany, 2016)

An 'independent watchdog' was involved in overseeing the process also in the UK. While the Better Regulation Executive¹⁴ managed the cross-government approach and worked with government departments to monitor the measurement of regulatory burdens, the

¹¹ A statutory part of the Office of Management and Budget (OMB) within the Executive Office of the President.

¹² The Treasury Board of Canada Secretariat provides advice and makes recommendations to the Treasury Board committee of ministers on how the government spends money on programs and services, how it regulates and how it is managed. The Secretariat helps ensure tax dollars are spent wisely and effectively for Canadians. (<https://www.canada.ca/en/treasury-board-secretariat.html>).

¹³ https://www.normenkontrollrat.bund.de/Webs/NKR/EN/Home/home_node.html.

¹⁴ A unit within the Department for Business, Energy and Industrial Strategy which is leading the regulatory reform agenda across government - <https://www.gov.uk/government/groups/better-regulation-executive>.

Regulatory Policy Committee¹⁵ (RPC) provided the government with external, independent scrutiny of new regulatory and deregulatory proposals by validating the estimates of costs and benefits of the regulatory proposals in scope of OIOO and OI2O. The RPC also validates the costs and benefits of all regulatory measures that count towards the Business Impact Target.

In Korea, KDI and KIPA perform an in-depth review of cost-benefit analysis conducted for regulations that fall under the scope of CICO. When KDI and KIPA conduct this particular review, they have the authority to issue a clearance on the reviewed cost-benefit analysis. If they find any error or ambiguity, KDI and KIPA can return the analysis for partial or complete revision to the drafting agency. The clearance from the research centres is required in order to continue the legislation-making process. The drafting agency submits the final report to the central oversight body, the Regulatory Reform Committee (RRC).¹⁶

All reviewed countries have given already established bodies responsible for co-ordinating regulatory policy mostly close to the centre of government also the responsibility to co-ordinate implementation of the OIXO programmes. This often includes methodological assistance and advice, issuing guidance, in many cases also assisting individual agencies in finding suitable 'outs' if trading is allowed (even though exceptionally). Two of the countries have also used already established 'independent watchdogs' to check the quality of calculations provided by ministries and agencies.¹⁷ This might help to strengthen the credibility of the process.

Reporting

To ensure compliance, governments also established reporting mechanisms on the progress of implementation individual OIXO programmes.

In Korea, all ministries and agencies have to evaluate their performance related to CICO bi-annually. RRO compiles this information and submits it to RRC. CICO is one of the factors that play a role in the evaluation of the ministries' performance. The results are published online. The ministries are graded based on their performance and financially rewarded for very good performance. The RRC also submits an annual report to the National Assembly in which one chapter is dedicated to CICO.

In Canada, departments and agencies are responsible for reporting administrative burden estimates as a part of Regulatory Impact Analysis Statements that are published with the regulatory proposal in the Canada Gazette. TBS tracks reported administrative burden estimates. These are annually shared with regulatory organizations as a part of check-up reports which provide feedback to departments and agencies on their implementation of the One-for-One rule and other regulatory reforms. Outstanding liabilities in administrative burden cost and regulatory titles are flagged to ministers and TBS works with organizations to determine how compliance will be achieved. In addition, the President of the Treasury

¹⁵ An advisory non-departmental public body, sponsored by the Department for Business, Energy & Industrial Strategy - <https://www.gov.uk/government/organisations/regulatory-policy-committee>.

¹⁶ The government's advisory body composed of government's representatives, regulatory reform experts from academia, business, and citizens' groups - <https://www.better.go.kr/fzeng.page.AboutRRC.laf>.

¹⁷ In Korea, the RRC which is also involved in overseeing the process is partially autonomous.

Board is required by law to annually prepare and make public a report on the application of the rule.

From 2012-2015, progress on implementation of commitments made under the Government of Canada's Red Tape Reduction Action Plan, including the One-for-One Rule, was reported in three Annual Scorecard Reports. These reports were reviewed and commented on by the Regulatory Advisory Committee, which was composed of external experts from business and a consumer group. After the publication of the final Scorecard report in 2015 the Regulatory Advisory Committee's mandate was completed. The results on the implementation of the One-for-One Rule and other reforms were made publically available also through the 2015-2016 Annual Report. In 2016-2017 and 2017-2018 the results were included in an annual report to Parliament on regulatory management initiatives.

In the UK until 2015, the BRE published a Statement of New Regulation every six months, giving a list of upcoming regulatory and deregulatory measures and an account of the Government's regulation and deregulation to date, summarising progress under one-in, one-out and one-in, two-out programmes. This was to ensure a consistent, transparent approach to the UK government's OIOO/OI2O agenda. The government then focused more on the Business Impact Target, but continues to publish annual reports on the BIT. It includes information on regulatory provisions that have come into force or ceased to be in force during the parliamentary year. In addition, the RPC, separately, publishes annual Corporate Reports summarising its work on scrutinising departments' analyses of UK regulatory impact assessments.

The Statistical Office is responsible for keeping the record of newly created regulatory costs as well as for their reduction in Germany. The database provides information on each ministry's performance including towards the one-in one-out goal. Ministries then have to report to the State Secretary on their progress as well as on potential difficulties in meeting the target. The annual reports that the federal government has to present publicly to the Bundestag cover, *inter alia*, the implementation of the one-in, one-out rule. In addition, the National Regulatory Control Council also publishes annual reports containing a section on the implementation of OIOO.

In the United States, annual reporting on the results of the government's implementation of Executive Order 13771 is provided in the fall edition of the Unified Agenda of Regulatory and Deregulatory Actions. The Unified Agenda is a long-standing report that informs the public about the regulatory actions that administrative agencies plan to issue in the near and long term.

Reporting is an important part of implementing OIXO. It helps to promote compliance with the offsetting obligation by publishing information on the performance of individual ministries and agencies toward the offsetting goals.

Risks related to OIXO approaches

In many countries where OIXO was implemented, some criticism of such approach appeared, namely from certain groups of academics as well as civil society organisations. Many of these critiques mentioned the fact that these approaches will lead to too much focus only on regulatory costs and to a danger that regulations which might be costly but still beneficial for the society will be abolished.

Most of the countries covered by this study have implemented OIXO alongside well established system of regulatory impact assessments based on a cost-benefit analysis. In Canada, for example, the Red Tape Reduction Act includes in its preamble the statement that “the one-for-one rule must not compromise public health, public safety or the Canadian economy.” (Government of Canada, 2015).

The US regulation-making system is still based on the presidential Executive Order 12866, which states that “[i]n deciding whether and how to regulate, agencies should assess all costs and benefits of available regulatory alternatives” and that “in choosing among alternative regulatory approaches, agencies should select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity)”. (President of the United States of America, 1993)

Similar principles are applied also in other countries, compliance costs are just one of many aspects that are taken into consideration when developing, amending or reviewing regulations, including especially regulatory benefits. In the UK, not doing so would be against the Better Regulation Principles of the Government.

As mentioned by several interviewed officials, governments in countries covered by this study mostly use the OIXO approaches as a communication tool, with the aim to stress the importance of shining more light on regulatory costs stemming from new regulations. However, OIXO is always used as a complement to standardised mechanisms for regulatory impact assessment and analysing both regulatory costs and benefits.

Still, the KDI-OECD joint report (OECD, 2017) admits that regulatory offsetting “may prevent the introduction of regulations that impose some direct regulatory cost but have a much larger net benefit for the whole society” and therefore Korea is currently looking into the possibility of including social costs and indirect costs in calculations.

It is not possible to implement regulatory offsetting successfully without having sufficient capacities to quantify impacts of regulations. This appeared to be a major issue in Finland during the pilot project and the lack of analytical capacities remains an important obstacle in full implementation of OIXO.

It is still too early to evaluate the effects OIXO programmes have regarding such risks. However, we might say that regulatory offsetting might not be suitable for countries that do not yet have well-established procedures for regulatory impact assessment or with weak regulatory management systems. For developing or emerging economies still building or reforming their regulatory frameworks, such an approach risks to mislead regulators towards solutions that will not be beneficial for the society.

Countries that decide to implement OIXO should do so based on an analysis of their regulatory framework leading to a conclusion that the level of regulatory costs has reached (or exceeded) the maximum level that is acceptable for the society. The analysis should then show that the country's regulatory framework needs simplification rather than a thorough revision. OIXO might not be suitable for countries that are trying to redesign their regulatory framework (i.e. countries in transition). In this case, targeted reviews of the most burdensome areas of regulations might be more suitable.

Other critiques say that OIXO leads to “cutting dead wood” - removing regulations from the books that might be outdated, obsolete or having insignificant impacts. Their abolishment will therefore not lead to any relief on the side of businesses or any other regulated subjects. The potential answer to this criticism is the combined focus on removing

regulatory titles as well as offsetting regulatory costs as is the case in the USA or Canada. These goals might be complementary and fully legitimate. To paraphrase one of the interviewees, offsetting regulatory costs makes sure that regulatory changes that result from OIXO bring about meaningful and measurable reductions in cost to regulated subjects. The focus on repealing of regulatory titles provides a motivation for regulatory organizations to “clean the books” and remove regulations that are old and unnecessary. This objective, on its own, serves a purpose of creating a less complicated and clogged regulatory system that is easier for regulatory subjects to navigate and understand.

Impacts of OIXO

As mentioned before, it is still too early to evaluate the impacts of OIXO approaches in most of the examined countries, especially those that implemented OIXO only recently. Also, the divergences among countries in the scope and focus of these programmes make any comparison extremely difficult.

Some of the countries have published their evaluations of economic impacts of some of their programmes that include OIXO elements. The methods used to calculate these impacts vary which makes the comparison across countries even more difficult. Canada, Germany, Spain and the UK all rely to varying degrees on methods using the modified Standard Cost Model to estimate savings in terms of administrative or compliance costs.

In Canada, the rule has generated \$30.3 million in annual cost savings from its implementation in 2012-2013 to the end of the 2017-2018 fiscal year. As well, a total of 131 regulatory titles have been taken off the books. The Red Tape Reduction Act includes a clause that requires a review of the Act to be performed by the President of the Treasury Board in 2020, five years after it became law.

Since the start of 2011 and up until July 2015, under “one-in, one-out” and “one-in, two-out”, the UK Government reduced the annual cost to business of domestic regulation by almost £ 2.2 billion. The UK Better Regulation Executive published its first annual report on the Business Impact Target (a program to reduce business costs with several imbedded tools) in June 2016. In the first period from 8 May 2015 to 26 May 2016, the Better Regulation Executive estimated that its “net deregulation delivered so far” is 885 million GBP (BRE, 2016).

In Germany, the Federal Government adopted a total of 53 proposals to which the bureaucracy brake applied in 2015. Of these proposals, 26 led to an increase in compliance costs, the total increase being 457 million EUR. However, the government estimates that 27 new proposals saved about 1.4 billion EUR, resulting in 958 million EUR in total estimated benefit of the one-in, one-out rule (Federal Government of Germany, Better Regulation 2015: More simplification. More transparency. More time for essentials., 2016). Nevertheless, Germany states the cost savings are not seen as the main benefit of the rule, but rather its communication function. By linking the responsibility of calculating costs and finding offsets to the “owner” of the regulation, the rule raises regulators’ awareness of the issue of compliance costs.

In Mexico, 73 regulatory drafts were subject to the “decreto 2x1” during the time period March 9 to October 31, 2017, resulting in cost savings equivalent to 31,347.94 MdP. Also taking into account the costs generated by the creation of new regulations amounting to 1,758.06 MdP, the net reduction of regulatory costs to citizens and the business community was estimated to be 29,589.88 million pesos. (Comisión Federal de Mejora Regulatoria, 2017).

The US Office of Management and Budget (OMB) recently published the fall 2018 Unified Agenda of Regulatory and Deregulatory Actions, which gives an update on the implementation of EO 13771. The administration is reporting that agencies continue to comply with the one-in, two-out requirement: 14 significant regulations have been offset by 57 significant deregulatory actions, effectively resulting in a four-to-one ratio of regulatory offsets. OMB declared annual savings of 23 billion USD in 2018 as a result (OMB, 2018). However, for purposes of the one-in, two-out requirement, some of the offsets are extensions or delays of compliance dates, or withdrawals of proposed rules that had not yet caused any costs.

In Finland, three proposals had cost impacts to be assessed under the pilot project of testing OIOO in 2017. As a result, the net annual regulatory burden resulting from national regulation was estimated to decrease by approximately EUR 150,000.

The estimates themselves, however, are almost entirely based purely on *ex ante* analysis. The impacts of regulatory policy tools, such as cost-benefit analysis and administrative burden reduction programs, are estimated before the new or reformed policy is in place. These estimates are also not updated once the policy is in place disregarding any changes made later in the legislation-making process. Also, none of the covered evaluations consider how the possible benefits of regulation may also be affected.

More in depth review of the Business Impact Target Programme was carried out by the UK National Audit Office in 2016. The review concluded that while the system has successfully raised the profile of regulatory costs imposed on businesses across government, due to exemptions, the bulk of regulatory costs on business had not been included in the scope of the target, and departments had not done enough to appraise the wider impacts of their decisions, or to evaluate their effects. This, as the NAO adds, “harms the credibility of claimed savings and reduces opportunities to learn from past experience” (NAO, 2016).

Despite the fact that it is almost impossible to compare OIXO programmes across jurisdictions, it would still be useful to evaluate to what extent the investments into additional workload stemming from implementing OIXO will deliver tangible results in terms of improving regulatory framework.

To actually measure the impacts of OIXO on economic efficiency it would be necessary to know the counterfactual of the costs and benefits of regulation, or at least the counterfactual of the cost of regulation without OIXO. However, even the latter cannot be easily estimated because it is very difficult to observe what regulatory costs would have been in the absence of OIXO (Hahn & Renda, 2017). In evaluating their programmes, most of the countries therefore use only the indicator of a change in regulatory/administrative costs. The change in benefits is usually not taken into account. Also, a reduction in this regulatory cost measure might not necessarily improve broader measures, such as economic efficiency: in many cases, reductions in administrative burdens can generate increases in enforcement costs, compliance costs, or reductions of regulatory benefits (OECD, 2010).

In its future work, the Regulatory Policy Committee should therefore focus on developing a methodology and indicators that could be used to evaluate OIXO programmes, potentially using the OECD Framework for Regulatory Policy Evaluation.

Conclusions

Despite some criticism and initial distrust among some scholars, civil society organisations as well as some regulatory policy practitioners, the OIXO approaches are becoming increasingly popular among OECD countries. The early adopters, such as the UK or Canada, have developed well-functioning systems and the UK has even 'upgraded' theirs twice. On the other hand, the approach was rather quickly abandoned by Australia. In addition a number of OECD countries are in the early stages of implementing OIXO approaches into their regulatory systems.

It is still too early to evaluate how successful OIXO programmes have been. There are also significant differences among various approaches used in countries implementing OIXO, as described in this paper. Nevertheless, some general conclusions might be drawn even at this stage.

Implementing an OIXO approach is not straightforward. There are many methodological and implementation issues that have to be solved before a country starts with such an endeavour. Based on the priorities behind the decision to implement regulatory offsetting, they need to decide on the scope of the project, which institutions will be subject to this obligation, which costs will be offset and which categories of regulations will be covered, when and how the offsetting will take place, whether trading and/or banking of offsets will be allowed, etc. Besides, decisions have to be made on how OIXO will be implemented, whether it will be pilot tested and implemented in stages. Last but not least, solid institutional structures have to be created (or adjusted, if they already exist) to co-ordinate and enforce the process.

In any case, a country implementing OIXO needs a solid methodology for calculating those regulatory costs that will have to be offset. Ideally, such methodology should be in place for some time prior to implementing OIXO, otherwise the lack of trained officials with capacities for analysing regulatory costs and insufficient experience will represent important obstacles for a successful implementation of OIXO.

OIXO is in some countries implemented with the aim of stressing the ownership of and responsibility for regulations and areas of regulation by certain ministries/agencies. Therefore, the responsibility for calculations of costs and finding potential 'outs' must be clearly linked to the 'owners' of these areas of regulations. If OIXO does not refer publicly to those who design agendas and create political will, it might not be effective in this sense.

As in case of other regulatory management tools such as RIA, governance and quality oversight is crucial. Such oversight should be carried out by a body with sufficient competences, independent from the agency drafting the regulation and conducting the analysis of costs to be offset. Accessibility and comprehensibility of data needed for the evaluation of costs is nonetheless important.

Also, similarly to other regulatory management tools, strong political commitment and backing is needed for a successful implementation of OIXO. How this commitment is expressed might differ depending on the country and its administrative culture, OIXO might be set by law (Canada, Spain), a presidential order (USA, Mexico), ministerial order (Korea, France) or a government policy (Germany, UK). Without such commitment, achieving the goals of OIXO is hardly possible.

OIXO might not be suitable for countries where regulatory framework is nascent, incomplete or has undergone already a systematic simplification reform as they may not

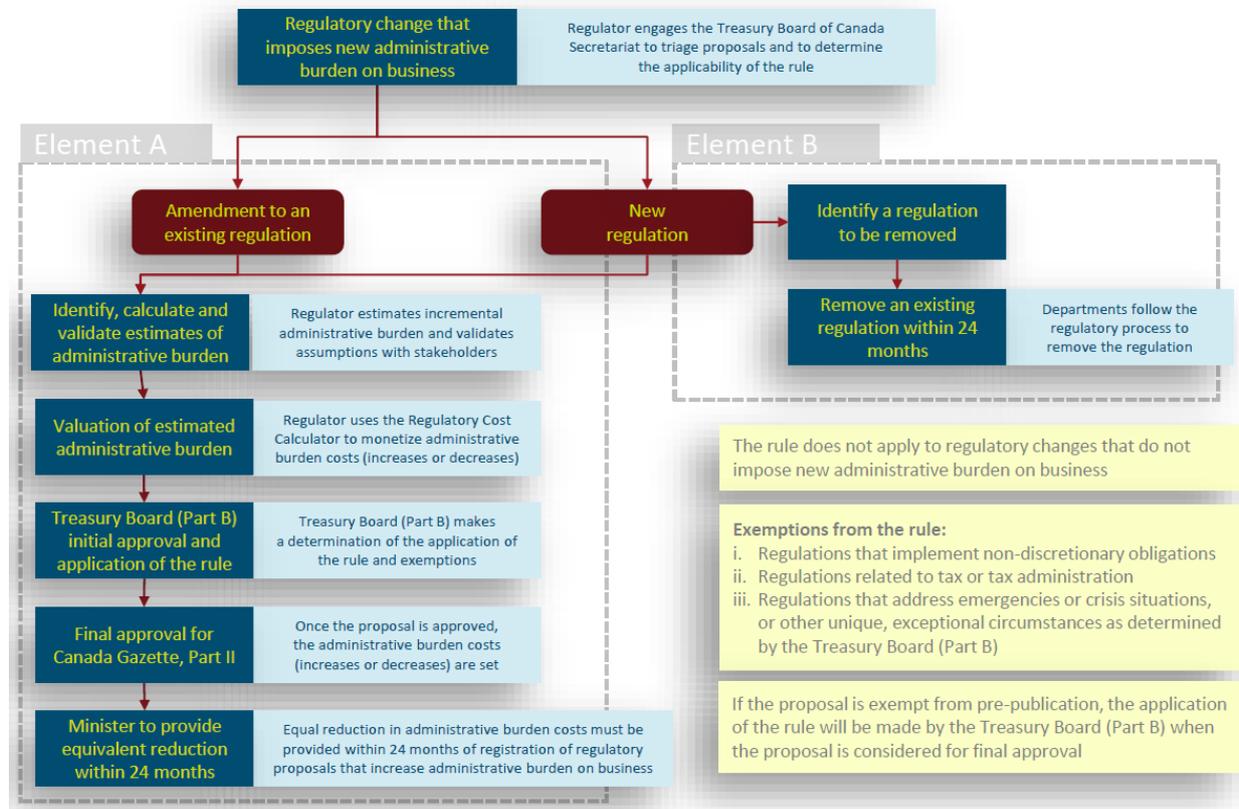
have anything to offset against. In this case, targeted reviews of the most burdensome areas of regulations might be more suitable.

Regulatory offsetting should not exist in isolation from other regulatory policies, such as RIA, systematic *ex post* reviews of existing regulations, stakeholder engagement policies, etc. OIXO should be implemented as a complement to these tools, not as a standalone tool. Its use is mostly in strengthened communication with regulatory agencies and highlighting regulatory costs.

Countries considering the implementation of OIXO should carefully consider all the possible options and decide, whether regulatory offsetting, despite its appeal, is the most suitable tool for achieving their goals. For developing or emerging economies, such an approach might be too risky and they should rather consider starting with smaller steps, such as focused reviews of existing regulations or gradual implementation RIA.

Annex

Figure 1. Overview of how the Canadian “One-for-One” rule works



Source: Government of Canada

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