

REGULATORY INDICATORS IN THE EU AND THE OECD: PERFORMANCE ASSESSMENT, ORGANIZATIONAL PROCESSES, AND LEARNING

The OECD has produced four waves of regulatory management indicators. By contrast, the European Union (EU) has never adopted a common system of indicators, although it is much more integrated and less heterogeneous than the OECD. This cannot be explained by the different propensity for performance measurement: the EU has agreed on policy metrics in economic and social policy areas, and regulation is a fundamental tool for this organization. Although structural variables matter, to answer questions about adoption (Yes/No), timing (when) and content of indicators (what type of indicators) we need the additional aid of policy learning and empirical observations on organizational processes. We find that the OECD process was one of self-directed learning fuelled by high socialization, internal validation of knowledge, favorable attitudes and posture of the secretariat, and mutually constitutive roles of delegates and staff. For the EU we find the reverse. These findings contribute to the literature on policy learning, regulation, and global performance measurement.

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1. Motivation: Inside International Organizations

Numbers matter in public policy, especially when they are presented as cross-national performance appraisals of reforms endorsed by international organizations – see Grek (2013) on education, Boswell (2009) on migration, Hansen (2012) on corruption, Kelley and Simmons (2016) on doing business indicators. Cross-national performance measurement implies regular monitoring and comparative ranking. It has its own subtle ‘scorecard diplomacy’ (Kelley 2017). In contrast to ad hoc naming and shaming, it is recurrent, and looks at both the good and bad ‘pupils’ in the class (Kelley 2017). Depending on where and how it is done, it has causal effects, including transparency and emulation of reforms. It can elicit the concern of governments for their reputation, and therefore shape policy change (Kelley 2017).

This article contributes to the literature from a different angle. Instead of looking at (to paraphrase Hansen and Porter 2012) how numbers effect governance, we

take a look inside international organizations and uncover the learning processes affecting the development of indicators. Hence, for us the presence or absence of comparative ranking, indicators, and performance metrics is, so the speak, the dependent variable, and we set out to find the causes that generate their adoption (or lack thereof).

The policy domain chosen for this article is regulation. This choice is motivated by a paradox in regulatory policy indicators: the European Union (EU) is a deeply integrated organization of member states. It has been called a regulatory state, - that is, a political system specialized in regulation rather than distributive, re-distributive and constituent policies (Majone 1996). Yet it is vastly less advanced in cross-country regulatory performance measurement than the World Bank and the Organization for Economic Cooperation and Development (OECD) - organizations that are certainly less integrated politically and economically. In this study we compare the EU and the OECD. This is due to the fact that they are comparable as most members of one organization are also members of the other, whilst the World Bank exhibits more heterogeneity.

Our research question is: why has the OECD managed to produce regulatory management indicators whilst the EU set the agenda for adoption but then momentum was lost? We are therefore interested in processes over time (rise and fall of regulatory indicators on the EU agenda, persistence and expansion on the OECD agenda) and what type of indicators were discussed and adopted. In short, the research question focuses on adoption (yes/no), timing (when), and content (what type of indicators).

Structural causes have a role to play. But one argument we put forward is that the internal decision-making processes of these two organizations explain the outcome. We are more interested in proximate causes and agency than in remote, structural causes because proximate causes have more explanatory leverage when it comes to variation over time. To answer the research question, we will then go inside the Regulatory Policy Committee of the OECD and the EU regulatory fora, looking at their learning processes.

Empirically, the analysis draws on a process tracing account, taking a sufficiently long period (from the early 2000s to 2015) to explain the outcome of different attempts over time to create regulatory indicators. The process-tracing sections draw on published material and on the sources reported in appendix.

In the next section we shall introduce the topic of regulatory performance management, before we move on to discuss our research question and the conceptual approach chosen to answer it. We will then empirically explore the processes. For the OECD, we will focus on the learning process that led to the 2015 indicators (OECD 2015). For the European Commission, we will investigate how momentum for regulatory measures was achieved in the early 2000s but subsequently lost. After these two empirical sections, we will advance our explanation. Our analysis sheds light on mechanisms of learning within the relevant specialized fora. The findings contribute to the literature on regulation, organizational processes, and the politics of global performance indicators.

A caveat must be addressed before we proceed. We are not intending to make a normative case for regulatory indicators, e.g., whether they are a manifestation of sound regulatory management (as argued by OECD 2002) or not. We do not even consider the question whether organizations like the European Union 'ought to' or 'should not' have regulatory indicators. A normative dimension such as this should be left for another article and another day.

2. What is at stake in regulatory performance measurement?

In the current economic conditions of constraints on public expenditure and taxation, regulation is an obvious target for political attention. Good regulations mitigate prison rape, reduce the number of deaths in road accidents, improve environmental conditions and assist growth (Sunstein 2014). Bad regulation damages the business environment, erodes trust in government and facilitates corruption (Djankov et al. 2006; Fazekas 2017). But how does one go about measuring the quality of regulation?

Let us briefly compare regulation with the other tools of government (Salamon 2002) such as tax and expenditure. The finance bill apportions taxation and

expenditure every year on the basis of recognized budgetary indicators. Instead, efforts to build a regulatory budget are embryonic, and there is no major parliamentary session deliberating on the annual regulatory agenda of the government – or at the very least, no session comparable to that of the finance bill (Doern 2007).

As mentioned, this is not due to a total absence of regulatory performance measures. Regulatory indicators exist –admittedly much less developed than measures of taxation and public expenditure. They cover both objective (such as number of consultations on new regulations taking place every year) and subjective dimensions (e.g., perceptions of regulatory burdens among a population of firms), and simple as well as composite measures. In short, the academic literature in the field has been developed somewhat (Radaelli and Fritsch 2012).

One problem with regulatory indicators, however, is that actors have different views on quality: some governments define regulatory quality programs on the basis of targets for the reduction of administrative obligations, others have formally endorsed the maximization of collective welfare as their performance goal. Citizens ask for regulations that save lives while business leaders want to reduce red tape (Doern 2007; Sunstein 2014). Elected politicians, bureaucrats and economists have different views of what ‘good regulation’ is (Radaelli and De Francesco 2007, chapter 2, table 2.1).

Briefly, the concept of regulatory quality is contested (Baldwin, Cave and Lodge 2012). Defining regulatory quality is a politically relevant act as each concept and its operationalization via indicators generates different costs and benefits across citizens and sectors of the economy, and empowers-disempowers certain actors in the regulatory policy process. The fact that there is a complex causal chain between regulatory policy tools like consultation and impact assessment and the final outcome of regulations as felt on the ground by citizens and firms makes regulatory evaluation politically sensitive as well as conceptually complex (Coglianese 2012).

The most common cross-country regulatory indicators tap into different stages of this causal process (Radaelli and Fritsch 2012). The OECD has gathered regulatory management indicators through self-reported questionnaires checked by its staff since the 1990s: these indicators track down the adoption and implementation of regulatory policy instruments like consultation, impact assessment, and regulatory policy evaluation. The EU has a long but awkward history of debates on regulatory metrics. This section has shown that these organizational discussions and processes take place within a context of political ambiguity about what regulatory quality really is and how it can be captured numerically.

3. Puzzle, analytical framework, and observable implications

How do we explain the fact that there has been more progress with regulatory indicators within the OECD than in the context of deeper integration provided by the EU? One case provides the counterfactual of the other. We cannot answer the question of whether the EU could have adopted indicators without observing a less integrated organization, the OECD, which has done exactly that.

Clearly, there are different causes explaining the two different outcomes. But not all of them have the same explanatory leverage. To begin with, let us consider the argument that the propensity towards measurement, ranking and comparison differs markedly between the OECD and the EU. Indeed, if an observer did not know the facts about regulatory indicators, they would assume that it must be easier to agree on a set of regulatory indicators within the EU. The propensity towards indicators and ranking is high within the EU. Take, for example, the Lisbon Agenda for growth and jobs in 2000, the more recent Europe 2020 strategy, the macro-economic imbalance procedure, and the European Semester. These strategies and instruments are indicator-rich. Yet the EU, an organization defined by its regulatory mission (Majone 1996) has displayed a period of enthusiasm for regulatory measures, followed by a lack of interest in recent years in a period where performance measures were gaining popularity across the EU's economic, monetary, and structural reform policies.

The Commission has never suggested using indicators as a binding measure that would affect member states in a similar vein to the indicators of the macro-economic coordination processes such as the macro-economic imbalance procedure. The most advanced suggestion with regards to this was to adopt EU-wide indicators and use them in open coordination processes that are not legally binding (Radaelli and De Francesco 2007:185). We cannot explain away the lack of regulatory indicators in the EU by saying that it is averse to indicators or averse to the legal coercive nature of the regulatory indicators suggested by the Commission.

The OECD is less integrated and much more inter-governmental than the EU. Each step towards measurement or appraisal on the basis of indicators is accurately checked by national delegates – contrast this with the oversight power that the European Commission has in areas like economic policy and structural reforms. It approached regulation in the 1990s (De Francesco 2016; Pal 2012), while the European Commission has consistently developed regulatory analysis ever since the inception of the single market in the 1950s. Yet the OECD has produced self-reported regulatory indicators four times during the last twenty years. In the 1990s and 2000s (the first three waves), the OECD regulatory indicators did not show the position of individual countries. Within its constrained environment, however, the OECD eventually managed to overcome the resistance to explicit comparisons. Today the OECD indicators show the position of individual countries, thus allowing cross-country appraisals and ranking.

This cannot be explained by the nature of indicators. Proposals for regulatory metrics offered in Brussels during the years have not been too dissimilar from the indicators used in the OECD (Radaelli and De Francesco 2007; Radaelli and Fritsch 2012). This thickens the plot. Considering the overlap (for European countries) between membership of the EU and OECD membership, why would the same country object to the production of indicators in the EU but not in the OECD?

Thus far structural differences have exhibited limited explanatory leverage: the EU is more integrated and has adopted indicators tapping into several policy domains (Atkinson et al. 2002). But there is another fundamental structural difference. The European Commission is a regulator, whilst the OECD does not regulate its member states (Marcussen 2004; Pal 2012; Stone 2003). Being a regulator, the Commission is accountable on whether EU regulation is necessary, adequate, and broadly speaking meets the standards of efficiency and subsidiarity. Since the 1990s, the topics of better lawmaking and, later on, better regulation have been high on the agenda of national delegations and ministers complaining about excessive or inefficient EU regulation - hypocritically ignoring the fact that major regulatory decisions are taken with the consensus of all EU institutions, including the Council of Ministers.

Thus, the relationship between the Commission and the member states is a two-way street. The Commission has invited the EU member states over the years to adopt regulatory indicators and other instruments to keep track of their reforms. Yet member states, too, have on many occasions asked the Commission to prove the value for money of EU regulation. The European Parliament is another actor active on the side of demand for more rigorous appraisal of regulations. Measuring regulation, then, means defining who is in control of the EU's lawmaking process.

By contrast, a fundamental task of the OECD Regulatory Policy Division is to provide policy advice to the national delegates. There is no body of OECD-level economic or social regulations that needs to be monitored or controlled. The function of control is much less important than the network-like dynamics (Pal 2012). National delegates have more ownership of the OECD agenda-setting process than in single market governance: tellingly, De Francesco (2016) finds that OECD indicators stimulate a type of benchmarking that is fueled by learning rather than via control or competition.

We infer from these structural properties that the agenda-setting processes of the two organizations are different. How this difference matters is difficult to establish unless we turn to process-tracing and specifically attend to the analysis

of process-related variables over time. As mentioned, we must explain the different outcome (EU has not adopted indicators but the OECD has), the variation of attention over time (high in the initial stage of EU agenda-setting, low in recent times), and the content of indicators (over time they become more explicitly comparative in the OECD and therefore harder to adopt).

An approach that performs well over time is policy learning (De Francesco 2016; Freeman, 2006). We need to briefly introduce the theoretical constructs that will be used in the empirical process-tracing, deriving observable implications from ideal-types of learning and showing why they matter for our explanatory purposes.

Learning in public policy is the process of adapting priors and beliefs on the basis of experience and social interaction. However, learning is often examined at the macro-macro level: learning in country X (independent variable) causes changes in policy Y (dependent variable). This has severe limitations in terms of research design (Dunlop and Radaelli 2017). Scholars of organizational learning have made the case for the observation of learning at the level of internal organizational processes (Huber 1991; March and Olsen 1975). Yet in comparative public policy analysis there are few studies of learning that are strong on micro-foundations and observe the interactions between individuals in complex organizations (Kamkhaji and Radaelli 2017). Thus, our original contribution to theories of policy learning lies in the focus on the micro-organizational level (Hadjiisky et al. 2017: 18 and 25): briefly, we look inside the EU and the OECD at the constellations of actors and problems involved in the organizational processes concerning regulatory indicators.

Our causal claim is that variation in learning generated by interactions among individuals in the two organizations explains variation on adoption, timing and content. What are the conditions for learning, then? How can we observe them empirically?

The literature has put forward a set of conditions: learning is facilitated by socialization, and the validation of knowledge by those who are directly involved in its production - as opposed to external validation by, for example,

communities of experts (Dunlop and Radaelli 2013; Risse and Klein 2010; Risse 2013). In international organizations, three more conditions apply: the posture of the committee chair and the secretariat, and whether the delegates from member states and the organization's staff see their roles as mutually constitutive or in terms of agent-principal relations (Risse and Klein 2010; Pal 2012: 23). Thus, we have observable implications. To generate learning that effectively changes behavior, we should observe the following in the internal processes of complex organizations: socialization, direct involvement in the production of learning, a suitable posture of the chair and secretariat of the committees, and mutual ownership of the process by government delegates and the staff of international organizations.

We need one more element for the architecture of our research design. Dunlop and Radaelli (2013) distinguish self-directed learning from other types of learning. They define learners as “those decision makers, policy makers and public organizations that hold the decision-making power at any moment in time. Teachers are those actors that seek to influence the decision-making process” (Dunlop and Radaelli 2013:606). When the learners are in control of the content or means of learning as well as in control of the learning objectives they are in self-directed learning mode. This mode is powerful because the learners can adjudicate and even create the evidence they need, without being constrained by disciplinary paradigms or pre-determined exogenous goals. In public policy, self-directed learners are not auto-didactic individuals: “learners in the self-directed mode may take advice from a range of teachers on the veracity of the information they find (...) They do not, however, identify with a single actor to inform the content and direction of policy” (Dunlop and Radaelli 2013:606). Consequently, our final condition is about the presence (or absence) of self-directed learning.

In line with these expectations, we should observe for the OECD a process of self-directed learning supported by high socialization, external validation of knowledge kept to a minimum, favorable attitudes of the secretariat, and mutually constitutive roles of national delegates and the international bureaucracy. The reverse should be observed in the EU case.

4. Regulatory indicators in the European Union

Since the Edinburgh summit of 1992, the European Commission has come under considerable pressure to justify the necessity and efficiency of its regulations. Thus, in this policy domain, the nature of the relationship between member states and the Commission was one of principal-agent rather than mutually constitutive relations. After a decade spent in producing partial responses to the demand of member states for better lawmaking, in 2002 the Commission produced its first integrated approach to regulatory management.

The approach was anchored to the philosophy of the White Paper on Governance (European Commission 2001). It was also a response to a high profile report prepared by a group of national experts and delegates on regulatory quality, the so-called Mandelkern report (Mandelkern Group on Better Regulation 2001) published in November 2001. Its most important target was the Commission. Indeed, the Mandelkern report urged the Commission to “propose by June 2012 a set of indicators of better regulation” (Mandelkern 2001 iii and 59).

The then President of the Commission, Romano Prodi, responded by drawing on the vision for the future of the EU contained in the White Paper on Governance (Renda 2006:48). In line with this vision of open and evidence-based governance, the 2002 Communication on better regulation (European Commission, 2002) included standards on consultation to allow stakeholders to make an input in policy formulation, and to open up the policy process to evidence and expertise. It also included a single impact assessment template to appraise policy proposals. This single template is still in use today at the Commission.

The impact assessment system of the Commission revolves around the three dimensions of economic, environmental and social effects of the proposals being appraised. This way the three major internal stakeholders of the Commission’s impact assessment left their imprint on the template (Allio 2008). Indeed, inside the Commission better regulation emerged as a compromise among the major players in EU regulation: the Secretariat General (SecGen) and the Directorates General (DGs) in charge of enterprise, environmental policy and social/labor

market regulation (Allio 2008). Thus, the pressure from the member states was refracted internally by the different DGs making their proprietary claims on the nascent impact assessment system.

An institutional architecture was supposed to bind the Council, the European Parliament and the Commission with the 2003 inter-institutional agreement on better regulation (OJ C321 31Dec 2013). This agreement was never operational on the ground, however. But it was re-launched in 2016 with a new inter-institutional agreement on better law-making (OJ L123/1 12 May 2016).

In the early 2000s, the intention of the Commission was to lock in these foundations of regulatory reform with a system of recurrent monitoring and measurement: in short, a system of regulatory performance indicators. The then DG Enterprise and Industry and the Secretariat General kicked off the game by publishing a tender for a study on regulatory indicators in 2003. This was a move intended to trigger self-directed learning: DG ENTR and the SecGen wanted to keep control of the objectives and means of learning. The fact that this was a tender and not one of the many studies funded by DG Research point us towards the intention to gather usable knowledge.

The tender was peculiar in that it included an OECD officer (Peter Ladegaard) on the project's steering group. The OECD was there to transfer its own expertise into the project as a research-intensive, networked organization (Kellow and Carroll 2013; Pal 2012; Stone 2004). A support group of national delegates was created to input evidence on regulatory reform into the project. A team of political scientists and economists based at the University of Bradford (UK) won the tender and executed the project, called IRQ – Indicators of Regulatory Quality. IRQ originated a research monograph by Radaelli and De Francesco (2007), where the readers can find the full story of that project.

Upon completion of IRQ, the Commission had a set of feasible suggestions about regulatory measures and their usage. IRQ indeed suggested both indicators and a process of open coordination to make use of them. Open coordination is based on iterations of goals setting, performance measurement, peer review, and deliberation (Radaelli and De Francesco 2007: 185). It does not involve the

creation of EU law. At that time, the open method of coordination was popular in EU circles as an alternative to binding commitments.

Equipped with these technical ideas about indicators and their possible usage, the Commission turned to member states, asking to agree and pilot a prototype of regulatory metrics. A different vision emerged. The UK and the Netherlands among others demanded a single composite measure of regulatory quality, giving the impression (or perhaps simply hoping for) that one could capture the complexity of regulation in a single indicator. Yet, IRQ researchers diminished any hope for this single, final, comprehensive indicator, showing that the composite measures were too complex to be properly communicated to politicians and acted upon by bureaucrats (Radaelli and De Francesco 2007). The Commission wanted alternative measures to remain on the table, looking at regulatory quality through the lens of the three dimensions of economic analysis, sustainability and social-employment figures – recall that the three-fold approach sealed an internal organizational agreement.

The most active national delegations were firmly on the side of the Secretariat General and DG Enterprise and Industry, at least until 2004. Up to this point, the learning process exhibited ‘mutually constitutive’ roles. An ad-hoc group called ‘Directors and Experts of Better Regulation’ (DEBR) provided the forum for socialization and endorsement of the norms behind indicators. In these months IRQ was featured more than once at the meetings of the DEBR. The group generated some early examples of socialization to the norms and values implied by regulatory quality indicators, with strong chairs and leading participants from the Netherlands and the UK. But when, at the political level, the then Finance Ministers Gerrit Zalm (NL) and Gordon Brown (UK) turned elsewhere, this norms-related socialization process terminated.

In 2004, in fact, there was a change of direction at the highest political level. Zalm was championing a stripped-down, basic approach to measure the cost of administrative obligations – something that was miles away from the conceptual rigor and complexity of impact assessment. This tool was called (and is still called today) the standard cost model (SCM). The Dutch had started using

metrics in a different direction: by setting departmental *targets* for the reduction of administrative burdens via the SCM (Coletti 2013).

Brown became convinced that it was easier to capture the attention of the business community with the SCM as it allowed the government to make claims about the reduction of red tape across departments. Politically, a statement such as “we reduced red tape by 25 per cent” makes a greater impression than “we have performed regulatory impact assessment on 25 per cent of new regulations”. There is plenty of evidence of this changing mood in the *Less is More* Report, a report to the British Prime Minister by the Better Regulation Task Force (2005). Note that the report was addressed to the Prime Minister, showing the high level of political interest that the reduction of administrative burden had reached in the UK. The report explicitly endorsed the standard cost model and the Dutch experience. The Netherlands and the UK wanted the Commission to tweak its regulatory policy in this direction.

A divide emerged within the various fora where regulatory measures were discussed – i.e., Competitiveness Council, the Commission’s High Level Group on Impact Assessment, the group of Directors and Experts for Better Regulation. On one hand was the broad, governance-inspired vision of the Commission. On the other, the Dutch and British de-regulatory, target-based vision.

The learners were starting to disagree on the objectives of their learning (de-regulation or broader notions of governance) and the contents (standard cost model or more sophisticated tools): self-directed learning was stymied. The committees and high-level groups (like the Directors of Better Regulation) exhibited confrontational attitudes over the direction of better regulation, rather than the attitude of contributing to a common problem-solving exercise.

Governments with low capacity for regulatory measurement felt they could follow the Dutch example and at least set targets for red tape reductions. The fact that intellectually the standard cost model reached an impasse (Helm 2007) did not stand in the way of substantial political endorsement by several Ministers.

Additionally the language of red tape was perceived as an efficient way to communicate with the business community (Coletti 2013).

In a matter of months, the Secretariat General and DG Enterprise and Industry found that they did not have many allies left to carry on with the learning process. The high-level political intervention signaled a shift of attention towards targets for administrative burdens reduction.

Before calling it a day, the Commission carried on with other initiatives. For example, in 2004 there were some attempts to circulate questionnaires to national delegations to collect at least some measures of regulatory quality. In fact, 2004 was a crucial year: in January four finance ministers (Ireland, Netherlands, Luxembourg and the UK) raised the issue of indicators as a way to measure progress with the goals of the Mandelkern report (Radaelli and De Francesco 2007:3). In May of the same year, the Italian, Irish and Dutch Presidencies of the EU tried to raise interest in cross-country comparisons with a report on impact assessment in ten countries (Italian, Irish and Dutch Presidencies 2004). Later in December, six consecutive Presidencies raised the prospect of the Commission adopting indicators “in consultation with the Council” (Radaelli and De Francesco 2007:3). But political attention was on administrative burdens. In 2005 the Council was already concerned with the cumulative impact of regulatory costs – forgetting the broader cost-benefit balancing act of the early years (Council 2005).

Unsurprisingly then, the only time the EU agreed on a regulatory performance measure was around administrative burdens. In 2007 the Commission launched its initiative to reduce administrative burdens by 25 per cent. In the same year the Council invited member states to set national targets of comparable ambition. In 2012 the Commission reported that the targets had been achieved with a self-reported reduction of 33 per cent. In the end, instead of a set of indicators, the EU adopted a single target in a narrow domain (Helm 2007).

Not everyone was ready to bury regulatory indicators. A number of projects sought to re-kindle the discussion, among this IQ tools (Indicators and Quantitative Tools for Improving the Process of Impact Assessment for

Sustainability), EVIA (Evaluating Impact Assessment), and the ENBR (European Network for Better Regulation) – all within Framework Program 6. ENBR created a dataset on impact assessment named DIADEM, but the striking fact was how little the researchers had to say about the usage of regulatory reform tools in the member states. Put another way, too many of the cells in the DIADEM matrix were empty. Another wave of projects was funded by DG Research in the next Framework Program 7, among them Liaise (Linking Impact Assessment Instruments to Sustainability Expertise, Jordan and Turnpenny 2015) – with an emphasis on building networks and sharing good practice in modeling economic valuation of sustainability issues. These studies carried out by large European networks of researchers were less oriented towards tailor-made self-directed learning, and were produced in a political environment where attention was focused on the reduction of administrative burdens.

Indeed, for all of these projects, there have not been any attempts to put forward any efforts in regulatory indicators in recent years. The re-launch of better regulation in 2015, championed by the Vice-President of the Commission Timmermans, included a toolbox entirely dedicated to technical tools for regulatory quality (414 pages long). The toolbox (http://ec.europa.eu/smart-regulation/guidelines/toc_tool_en.htm) does not include a system of regulatory indicators to monitor, manage and communicate the performance of the regulatory system. The momentum for regulatory indicators seems completely lost in today's EU.

5. The OECD: Constructing and validating regulatory measures

The OECD experience with regulatory management indicators has been historically anchored to surveys of member states. Three waves of surveys were carried out in 1998, 2005 and 2008/2009. The data was built on self-reported questionnaires. As mentioned, the series 1998 to 2009 does not include information on individual countries. The new 2015 survey, included in the Regulatory Policy Outlook (OECD 2015a), presents some important differences: there is more emphasis on examples and fact-checking to support the answers given by member states; the individual position of each country on each

indicator is accessible and therefore one can compute rankings; there are composite measures agreed by member states; the sensitivity of composite indicators to different weighting schemes is checked with appropriate techniques (Arndt et al. 2015). To understand this step-change, we have to trace the process and the fora where the decisions were taken.

Starting from an organizational change standpoint. In 2009 the OECD Council created a Regulatory Policy Committee (RPC) (Pal 2012) to signal its commitment to regulatory reform. The Committee is supported by OECD staff within the Regulatory Policy Division – which in turn belongs to the Public Governance and Territorial Development Directorate. The Division has over the years gained in analytical capacity by hiring staff with skills in governance, public policy and statistics. The Regulatory Policy Division serves as Secretariat of the RPC. As explained by Pal (2012), most of the policy-related learning processes of the OECD take place at the level of committees.

A nine-member Bureau of the RPC provides strategy. In the period we examined, it was chaired by the former chair of the Australian Productivity Commission (Gary Banks, Dean of the Australia and New Zealand School of Government). Banks' presence was key to keeping the content and direction of learning strictly within the bounds of the RPC. The Steering Group of the RPC quickly evolved as the body where lessons from practice were validated. In short, the Bureau operated as strategic body, the Steering Group as community of practice, the Secretariat distilling and operationalizing the content of learning, and the overall RPC for the final discussion and legitimation of the decisions taken.

For the RPC, the previous three waves of regulatory indicators were an obvious starting point. Yet, although this data reflected the answers provided by governments it didn't necessarily represent the real-world implementation of regulatory reform. The goal then was to move from the presence of a given policy tool (impact assessment, transparency, notice and comment, regulatory

evaluation) to measures closer to the domain of implementation. How do we get there?

The highest levels of the organization sent positive signals in response to this question. In 2012 the OECD Council endorsed a new set of principles in a Recommendation on Regulatory Policy and Governance (OECD 2012). Now, for the RPC, the 2012 principles endorsed at the ministerial level (OECD 2012) represented the ultimate benchmark of success in terms of regulatory reform achievements. The challenge was how to make these relatively abstract principles operational. Learning about indicators became a component of this strategic agenda. In contrast to what was done in the past (OECD 1995), the 2012 Recommendation was more demanding in terms of implementation.

One way to move forward was to draw on the initiatives of PUMA (Public Management Committee, Pal 2012). With PUMA the OECD had already defined its key dimensions of regulatory reform: impact assessment, stakeholder engagement and regulatory-legislative evaluation. These dimensions defined the contents of the learning process the RPC was embarking on. Indeed, they feature prominently in the opening pages of the Regulatory Policy Outlook (OECD, 2015a: 19) where they are connected to the 2012 Recommendation. The structure of the 2014 survey, then, became an operationalization of this way of reasoning.

Thus the objectives and contents of learning were secured. What about the means of learning? The data provided by governments in the past were in need of more factual checks – e.g., more examples supporting the responses to the questionnaire. It was not just a question of formal adoption versus implementation. There was also a problem of consistency across countries: the RPC came to acknowledge that some countries were too high on some scales or too low on others. This is where the relative stability of the Committee membership contributed to another important variable of the learning process: socialization. The presence of a new Committee with its own relatively stable

membership and its significant chair assisted in the generation of a common sense of purpose and trust. It soon became clear that there had to be a change on how the answers were collected, validated and for the first time compared explicitly.

Here we find two more variables: the posture of the OECD staff and the perceptions of the roles of national delegates and OECD bureaucracy as mutually constitutive – as opposed to the tension in the principal-agent roles we have seen in the EU. We start with the roles. The RPC embarked on a search to collectively identify the indicators that would best measure compliance with the principles of the 2012 Recommendation. Consensus on the purpose of the exercise – between national delegates and OECD staff - came before any discussion of measures. Consequently, the discussion on how the questionnaire should look revolved around questions like: how would we track down compliance with this principle, empirically? Once some broad items were identified, the discussion moved on to the identification of questions and how to probe the answers to survey questions, what kind of examples would reinforce one type of response or another, what was the level of precision needed to be confident about a certain response. This learning process was iterative, with the RPC secretariat going back to the individual members of the RPC on more than one occasion, and with plenty of collective discussions.

Learning, indeed, was facilitated by the posture and attitude of the OECD staff. They made it clear that their attitude was not to provide definitions in a top-down style, collect data and then rank countries. Instead, they were there to listen to the experience of individual delegates, with the aim of getting to a collective definition of measures gradually. The OECD staff acknowledged up front that an organization based in Paris had less first-hand experience of regulatory reforms than the delegates grounded in their national experiences. The idea was to establish a sense of collective ownership in an effort to reduce the ambiguity of some concepts through a collective process of argumentation and persuasion. Key in this process was the commitment to establish shared

interpretations of regulatory performance that would not be skewed towards a particular experience of a country or a region.

The Regulatory Policy Division did not act as a ‘teacher’ or ‘epistemic actor’ but rather as a ‘facilitator’ of learning – a facilitator that at key junctures was able to distill the shared understandings that were being collectively generated (recall the definitions of these concepts in Dunlop and Radaelli 2013). The overall level of epistemic mobilization remained low throughout the exercise. Although the OECD eventually published a collection of academic papers (OECD 2015b) to complement the 2015 Regulatory Policy Outlook, this collection was seen by the delegates as additional decorative legitimation of the work undertaken. As a matter of fact, the collection does not touch upon the issues raised by the 2015 Outlook (OECD 2015a). Traces of epistemic influences may exist but more upstream, in the OECD definition of regulatory quality (OECD 2015a:23-24). Thus, the RPC delegates and the OECD staff also controlled the validation of knowledge and lessons learned, under the influential chairmanship of Gary Banks.

Contrary to the EU case, there was no political upheaval in this process. Every problem was discussed internally, without intervention from the countries’ ambassadors to the OECD – there was nothing similar to the Zalm & Brown intrusion in the EU learning process. The project Steering Group grew to fifteen people. It later became a body of nineteen delegates. A larger-than-usual number of delegates joined because they wanted to have ownership of the project. As the Steering Group was an informal body, it had the freedom to have any conversation it wanted. The delegates felt they were not driven by the OECD staff but rather they were on a mutually constitutive path with the OECD staff as fellow travelers.

An outcome of this process of learning was the emergence of a critical posture on the classic YES and NO modality of response. Following discussion with the delegates, the Secretariat reasoned that in some cases it was impossible to conclude in terms of presence or absence of certain features of regulatory

reform. In some cases it is fair to say that there is an approach to, say, consultation in some countries, and a different approach in another group of countries. This opened the door to categorical measurement and alternative ways of producing regulatory reform. Another outcome was the agreement on composite indicators – as we have seen in the case of the EU and in section 2, this is a big hurdle. The discussion progressed to a conceptual mode, with the aim of getting to a shared understanding of the main dimensions and only then derive composite indicators.

Upon completion of the composite indicators, the data and the report were published, with tables showing the individual position of countries (Arndt et al. 2015; OECD 2015). Ranking has traction. It brings political attention. This has allowed the delegates to gain access to political levels that had in the past been hard to access. To show the position of your country on a chart is an effective way to capture political attention – more effective than trying to explain how regulatory impact assessment works. Interestingly, the Regulatory Policy Outlook states: “Indicators should not be interpreted as a measurement of the quality of regulation itself. While the implementation of the measures assessed by the indicators aims to deliver regulations that meet public policy objectives and will have a positive impact on the economy and society, the indicators themselves do not assess the achievement of these objectives” (OECD 2015a). These words of caution were important in mollifying the resistance of some delegates to explicit benchmarking. In fact, the Outlook argues that cross-country comparisons based on the indicators are not comparisons of regulatory quality but comparisons of policy instruments for quality.

6. Discussion and Conclusions

We can now answer our research question about adoption, timing and content of regulatory indicators. Recall what we said about structural variables: the Commission is a regulator, the OECD is not. The two organizations differ on other structural dimensions: one is network-based, the other is multi-level with some non-trivial principal-agent features. The OECD is structurally positioned to provide advice to member states, not to regulate them. Its vocation or mission is

to act as high-level club and to put on the table its analytical expertise. The EU is much more of an arena than a policy forum; certainly, it is not a club of national delegates assisted by dedicated staff. The Commission has high visibility and is the object of a conflict-ridden discussion of what EU law should and should not do.

The incentives of the OECD staff working in the field of regulation have led them to regulatory indicators as prime product – without them, the high profile of the RPC would not have the necessary analytical base. The fact that the instrument chosen for measuring regulatory performance is a set of self-reported indicators – surely moderated and discussed with the OECD staff, but still originating from self-reporting activities – mitigates the resistance of national delegates, who have an important lever of control of what comes out of the measurement. In short, the structural variables point to the alignment of mission, incentives and instrumentation for the OECD leading to adoption of performance measures in the field of regulation. Given these structural variables, the Commission is at a disadvantage when compared with the OECD in proposing regulatory indicators.

Yet, crucially for the explanatory leverage of structural and contingent variables, this does not explain variation over time both in Paris – where resistance to cross-country explicit measurement was not overcome in the first three waves of regulatory management indicators – and Brussels – where we documented the rise and fall saga of initiatives targeting regulatory indicators.

By looking at the organizational processes over a sufficiently long period of time, we have found that variation in learning processes matters. The OECD project delivered because it was underpinned by self-directed learning, with a differentiation of roles between the Bureau, the Secretariat, the Steering Committee and the RPC that was functional. The OECD was not predestined to success. It could have failed, or could have produced a round of symbolic cooperation of the delegates or extenuating inter-governmental negotiation.

Trust and commitment were stabilized by the attitudes of the OECD staff and by how the players defined their roles. Socialization fueled trust and was cemented

by the intellectual leadership of Gary Banks. The learners did not need much epistemic help or directions from external experts. By contrast, the Commission's learning path started as self-directed but was interrupted by the intervention of high-level politicians like Brown and Zalm, who re-directed the regulatory reform agendas of the EU towards wars on red tape.

These findings speak to researchers willing to explore how international organizations think, and to theorists of the policy process interested in the role of learning in agenda-setting. They also speak to builders of learning theories based on empirical observations of the internal processes of complex organizations – thus complementing the macro-macro orientation that seems prevalent in the field (Dunlop and Radaelli 2017). There are also lessons about timing: to compare learning processes (in two or more organizations) we need a sufficiently long period of time, because the observation of a single decision is not informative.

There are limitations that accompany these findings. Learning-based explanations do not replace structural explanations, they address variation that is un-explained by structural variables. Our analysis is limited to two organizations, and misses a large, perhaps dominant, producer of regulatory and governance indicators, the World Bank. Future research should broaden its empirical range (for an example see De Francesco 2016) as well as extending the analysis of learning too what happens at the domestic level after consensus on indicators has been reached in international organizations.

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**REGULATORY INDICATORS IN THE EU AND THE OECD:
PERFORMANCE ASSESSMENT, ORGANIZATIONAL PROCESSES, AND LEARNING**

Claudio M. Radaelli

Appendix
Information and Evidence: Sources

Participation in projects on Regulatory Indicators

1. Indicators of Regulatory Quality [IRQ](#) (Project director and author of the final report), European Commission, DG Entr tender (2004)
2. Evaluating Integrated Impact Assessment [EVIA](#), Director of the work-package on Measures, European Commission, Framework Programme 6 (2006-2008)
3. European Network for Better Regulation [ENBR](#) (Head of the methods task force of the project charged with building a system of indicators called DIADEM), European Commission, Framework Programme 6 (2006-2008)
4. Better Regulation for Growth [BRG](#), World Bank and DFID, co-author with Fabrizio De Francesco of two expert papers on regulatory indicators; participation to project meetings in Europe
5. OECD [Framework for Regulatory Evaluation](#), co-author with Oliver Fritsch of one of the three expert papers - on theory and applications of regulatory indicators. The paper draws extensively on exchanges, audio-conferences and access to original documents made available to us by several OECD delegates sitting on the Regulatory Policy Committee (2014)

Participation and hearings

1. Hearings and provision of written evidence at European Parliament and House of Lords on better regulation and impact assessment in different years
2. Invited as independent expert to meetings of the Regulatory Policy Committee of the OECD in the period 2012-2015 to talk about the design of regulatory indicators
3. Invited presentations to the EU group 'Directors of Better Regulation' in 2008 and 2009
4. Invited as independent expert by the Regulatory Scrutiny Board of the Commission to report on quality of impact assessment (2016)
5. Italian delegate (*Presidenza del Consiglio dei Ministri*) to the Public Management Committee of the OECD on two occasions, in 2002 and 2004

Semi-structured Interviews carried out for this article

1. Interview with OECD officer, June 2016 (90 minutes), followed up by email exchange
2. Interview with think tank leader, May and July 2016 (60 minutes each)
3. Interview with European Parliament officer, May 2016 (60 minutes)
4. Interview with country delegate on the OECD Regulatory Policy Committee, May 2016 (90 minutes) followed up by two telephone calls and email exchange