

Regulatory Budgeting: Inhibiting or Promoting Better Policies?

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ABSTRACT

The adoption of regulatory budgeting rules such as “One In One Out” (OIOO) has proven to be beneficial in a number of countries around the world, not only (and not prevalently) due to the cost reductions achieved, but rather since it triggered greater awareness of the costs generated by regulation; and provided administrations with incentives to manage the existing stock of regulation and perform regular retrospective reviews. At the same time, these should neither be conceived as sufficient to improve the quality of legislation, nor hailed as substitutes for a comprehensive analysis of the positive and negative impacts of regulatory measures. This paper reviews the international experience with regulatory budgeting and cost offsetting rules in nine countries, drawing lessons from this emerging experience for future reform in the United States, where the regulatory budgeting system introduced by the Trump administration with EO13,771 is now officially repealed.

Ten main lessons can be drawn from the analysis. First, regulatory budgeting systems are not a panacea, but can only bear fruit as part of a broader mix of better regulation instruments. Second, these systems work best when implemented as a whole-of-government commitment. Third, if properly designed, regulatory budgeting systems can generate positive behavioral impacts inside the administration. Fourth, rules that take the form of “One In One Out” are the most recurrent and the most sustainable form of regulatory budgeting rule. Fifth, If carefully designed, regulatory budgeting rules are not incompatible with an ambitious policy agenda. Sixth, regulatory budgeting systems should focus on the elimination of “unnecessary costs”, i.e. costs that do not generate corresponding regulatory benefits. Seventh, regulatory budgeting systems are compatible with innovation-friendly tools such as regulatory sandboxes. Eighth, if properly designed such rules can incentivize widespread, transparent retrospective reviews. Ninth, regulatory budgeting systems can be reconciled with full-fledged cost-benefit analysis or multi-criteria frameworks. Finally, regulatory budgeting systems have produced limited impact when governments have contemplated a broad set of exceptions, or adopted an excessively narrow focus.

INTRODUCTION

Over the past two decades, several governments have introduced tools to incentivize regulators to become more aware of the costs they impose on businesses and citizens when they propose new rules. In some European countries, such as the Netherlands and Germany, this cost-focused approach has taken priority over more comprehensive better regulation strategies such as the use of *ex ante* regulatory impact analysis (RIA), or comprehensive retrospective reviews of the costs and benefits of individual regulations. In a dozen European Union Member States, plus Canada, Korea, Mexico and the United States, governments of various political orientations have introduced forms of regulatory budgeting, which require administrations to identify, every time they introduce new regulation entailing significant regulatory costs, provisions to be repealed

or revised, so that the net impact on overall regulatory costs is (at least) offset.¹ These rules are generically referred to as “One-In-X-Out” (OIXO). They can be considered as a special case of so-called burden reduction targets, which in turn originate in the Standard Cost Model, a simplified approach to cutting red tape implemented in the Netherlands since the early 1990s.² While these targets tend to be specified in absolute terms (e.g., reducing 10 billion USD of regulatory costs within five years), OIXO rules work differently, in that they link the introduction of new regulatory costs to the achievement of a cost reduction. In their most common form of “One-In-One-Out” (OIOO), these rules amount to a commitment not to increase the estimated level of burdens over the chosen timeframe. The OECD refers to these commitments as “regulatory offsetting.”³

Depending on the circumstances, the OIXO rule may explicitly refer to the number of regulations, and thus require that for every regulation introduced, one or more existing regulations are eliminated; or to the corresponding volume of regulatory costs, and hence require that when a new regulation is introduced, one or more regulations are modified or repealed, such that the overall change in regulatory costs is zero or negative. Most countries adopted the latter version, based on cost offsetting rather than on avoiding increases in the number of regulatory provisions. The United States, as well as France, specified the OIXO rule both in terms of number of regulations, and in terms of volume of regulatory costs.

Regulatory budgeting systems have sparked a heated debate over the past decade. Some commentators have argued that they may end up reducing the incentive for policymakers to introduce rules that, despite being costly, would entail net benefits for society. More generally, rules that impose a gradual reduction in regulatory costs have been criticized as jeopardizing the agenda of governments willing to pursue an ambitious, expansive policy agenda, for example pursuing enhanced civil rights protection, sustainability goals, or greater resilience. On a more positive note, OIXO rules are seen as potentially beneficial since they incentivize policymakers to consider more carefully, and where possible monetize, the cost of regulatory interventions. They can also push administrations to carry out comprehensive retrospective reviews of their regulatory stock, in the search for provisions to repeal or, more generally, rules that are obsolete, redundant, or inefficient.

This paper reviews the international experience on OIXO rules, drawing some lessons for the future of regulatory reform. Section I below introduces basic definitions that can help the reader navigate through the technical jargon used in the remainder of the paper. Section II discusses the experience of eight countries with OIXO mechanisms, and briefly describes the one recently announced, and currently being piloted, by the

¹ See Robert W. Hahn and Andrea Renda, *Understanding Regulatory Innovation: The Political Economy of Removing Old Regulations Before Adding New Ones* (2017). Available at SSRN: <https://ssrn.com/abstract=3022552> or <http://dx.doi.org/10.2139/ssrn.3022552>

² For a detailed description, see Andrea Renda et al., *Assessing the Costs and Benefits of Regulation* (2013), Report for the European Commission, Study for the European Commission’s Secretariat General. Available online at https://ec.europa.eu/smart-regulation/impact/commission_guidelines/docs/131210_cba_study_sg_final.pdf.

³ Daniel Trnka and Yola Thuerer, *One-In, X-Out: Regulatory offsetting in selected OECD countries*, OECD REGULATORY POLICY WORKING PAPERS 11 (2019), OECD Publishing, Paris.

European Commission. Section III summarizes the main lessons learnt from these experiences and briefly discusses the future of regulatory budgeting. Section IV concludes by briefly reflecting on possible future scenarios for improving regulatory quality after the pandemic.

I. REGULATORY BUDGETING AND THE BROADER BETTER REGULATION AGENDA

Terms like “administrative burdens”, as well as “substantive compliance costs” are often used to refer to specific categories of regulatory costs. While in the United States emphasis is normally placed on so-called “opportunity costs”, as part of the overall benefit-cost analysis framework described in OIRA Circular A-4, in many other countries a more pragmatic, accounting-based definition of regulatory costs has prevailed, becoming part of the better regulation practice over time. Figure 1 below shows a general map of the impacts generated by legal rules, now included in the European Commission’s Better Regulation Toolbox.⁴ As shown in the figure, regulation normally produces both direct and indirect impacts, which in turn can generate second-order effects (“ultimate impacts”). The tools described in this report mostly deal with “Area 1”, or “Direct Regulatory Costs”, which encompass both direct compliance costs and, as a residual category, irritation costs (or hassle costs), which are typically more difficult to quantify or monetize. These costs are represented in the left part of Figure 1 below, which provides a comprehensive map of the costs and benefits of regulation.

Direct compliance costs include the following sub-categories:

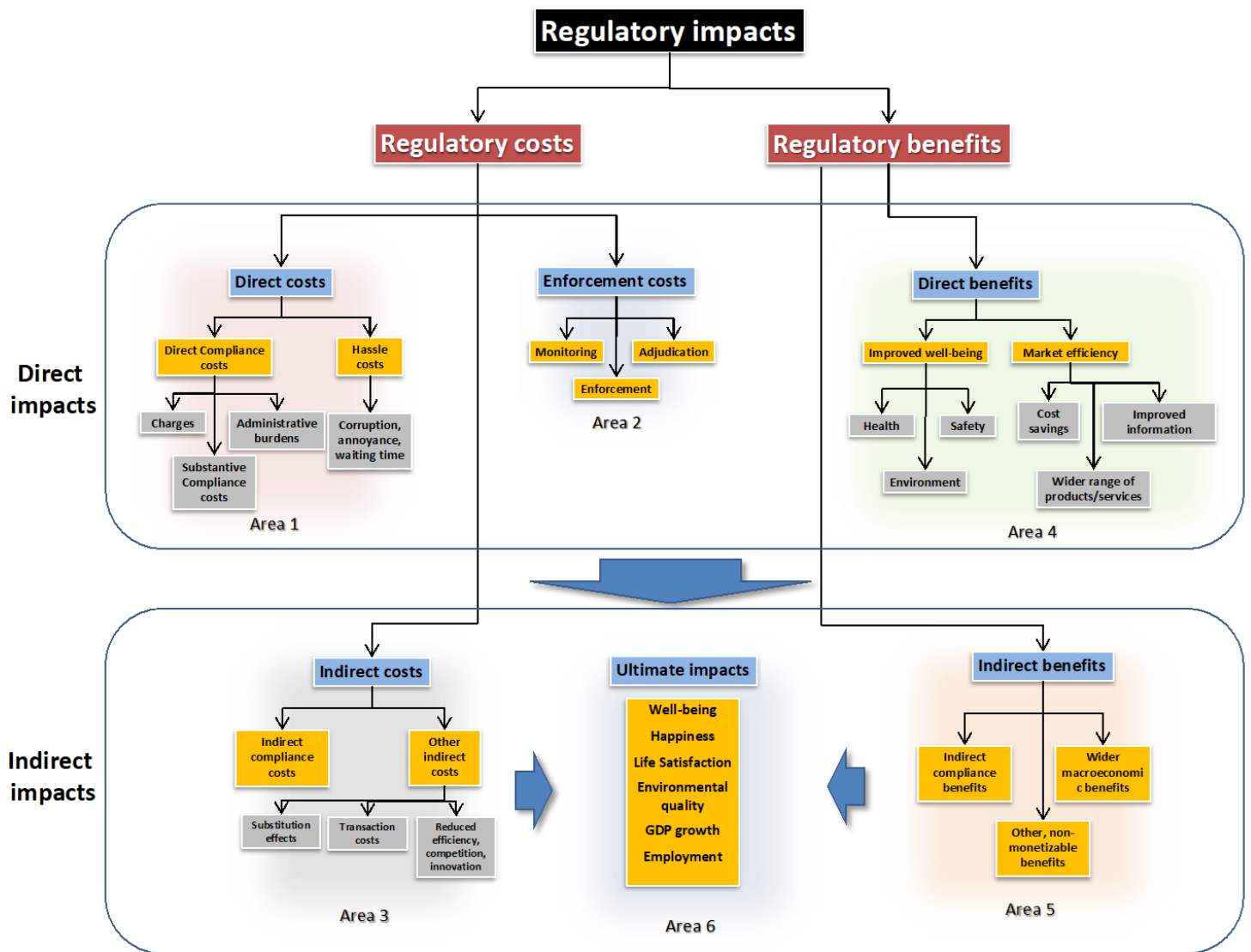
- *Charges*, which include fees, levies, taxes, royalties, etc. These are often easy to calculate, as their extent is known. What is sometimes more difficult to assess is who will bear those costs, as this might depend on the extent to which these costs will be passed-on to entities other than those targeted by the legal rule. For example, emissions allowances might be passed downstream onto end consumers in the form of higher prices for certain products, or a more expensive electricity bill.
- *Substantive compliance costs*, which encompass those investments and expenses that are faced by businesses and citizens to comply with substantive obligations or requirements contained in a legal rule. These costs can be further broken down into *one-off costs* (faced by regulated actors to adjust and adapt to the changed legal rule); and *recurrent costs* (substantive compliance costs that are borne on a regular basis due to the existence of a legal rule that imposes specific periodic behaviors). These costs are calculated as a sum of capital costs, financial costs, and operating costs.
- *Administrative burdens* are costs borne by businesses, citizens, civil society organizations, and public authorities as a result of administrative activities performed to comply with information obligations included in legal rules.

Direct costs are normally instrumental to the achievement of specific benefits. For example, investments related to compliance with health or environmental standards, such as the purchase of new equipment or the training of personnel, are needed to ensure

⁴ The figure was originally published in Andrea Renda et al. *Assessing the Costs and Benefits of Regulation*, *supra* note 2. In that study, all other types of costs and benefits are given a detailed description.

that the policy objective to improve healthcare or protect the environment is met. However, in some circumstances the existence of overlaps between regulatory provisions, as well as inconsistencies or redundancies between regulatory provisions, can generate “unnecessary” (or “unnecessarily high”) costs. Some costs can also become unnecessarily high after the entry into force of a given rule. For example, this can occur when new technologies make it possible for regulators to introduce new forms of electronic compliance verification, which replace older and more costly ones and thus lead to a reduction of administrative burdens. Accordingly, direct costs from regulation must be approached in a dynamic way, rather than as a static concept.

Figure 1 – A map of regulatory costs and benefits



Source: Renda *et al.* (2013)

Against this backdrop, OIXO rules vary significantly across jurisdictions, according to several features, such as:

- *Their scope, e.g.,* whether it is limited to secondary legislation, such as sectoral regulation and implementation measures, or also covers primary legislation developed and voted upon by parliaments. The scope of OIXO rules tends to follow that of *ex ante* policy appraisal instruments, such as Regulatory Impact Analysis.

Contrary to what happens in the United States, where the RIA system applies to federal regulation, in many other countries *ex ante* impact assessments are carried out also on legislation approved by Parliament, and regulatory/legislative budgets follow the same approach.

- *The type of costs covered, e.g.*, whether the rule only covers administrative burdens, or also substantive compliance costs, and/or enforcement costs. The impact of an OIXO rule becomes much greater if the scope extends to substantive compliance costs, which tend to be much higher than administrative burdens. However, most countries apply the rule only to administrative burdens, and often limit themselves to computing regulatory costs for businesses, rather than for society as a whole.
- *Whether the rule requires regulations to be eliminated, or also modified.* OIXO rules that focus on the volume of costs, rather than the number of rules, are more likely to allow for the revision of existing regulations, rather than requiring withdrawal.
- *Whether $X > 1$, i.e.*, whether the amount of costs to be eliminated equals the amount of costs introduced, or is a multiple. For example, in the U.S. the Trump administration introduced with EO13,771 a “one-in-two-out” rule in terms of number of regulations; however, the rule is effectively an OIOO rule in terms of the volume of regulatory costs.
- *The timing of offsets, i.e.* whether the rules to be repealed must be eliminated contextually with the approval of the new rule, or within a given timeframe. For example, in Germany the “outs” should be identified and acted upon by the end of the fiscal year, whereas in Canada the offsetting can occur within 24 months from the introduction of the “ins”.
- *Whether an ex ante impact assessment is required* for measures that are repealed or revised.⁵ In principle, mandating a fully-fledged impact assessment for both “ins” and “outs” could end up placing additional burdens on the administration, hence slowing down the regulatory process. At the same time, it can provide a stronger guarantee that the decision to revise or repeal a given existing regulation does not lead to the elimination of significant (or greater) regulatory benefits alongside costs.
- *Whether any exemption is foreseen, e.g.*, for regulations in the domain of home affairs or national security, or adopted in situations of emergency. In some countries, including Mexico and Spain, several exemptions have been introduced, whereas in other legal systems certain areas have been excluded altogether from the application of the rule: for example, in Germany the transposition of EU law is not subject to the OIOO rule, although the government occasionally analyses the prospective impact of new EU rules on regulatory costs.
- *Whether the system adopted allows for “banking” cost savings over time, or “trading” cost savings across agencies/ministries.* In the case of banking, one administration that achieved extra savings compared to the target for a given year is allowed to carry

⁵ Note that in some countries (e.g., the United States) the government uses the term Regulatory Impact Analysis or RIA; whereas in other countries (also for reasons related to the scope of their better regulation system, which does not only include regulatory measures) reference is made to Regulatory Impact Statements (RIS), or Impact Assessment.

forward the extra savings to the following year. This measure provides incentives to the administration to implement reduction measures as quickly as possible, in order to be relieved from the responsibility of achieving additional savings in the future. In the case of trading, the government can decide to take the “outs” from a different policy area than the one where new costs are introduced. This can occur, for example, whenever a regulatory measure is deemed necessary in a given policy area where no opportunities for cost reductions can be identified.

II. OIXO RULES: SELECTED NATIONAL EXPERIENCES

There are at least twenty countries in the world that have adopted an OIXO rule. These include ten EU member states (Austria, Finland, France, Germany, Hungary, Italy, Latvia, Lithuania, Spain and Sweden) as well as Canada, Mexico and Korea. In the past, three countries have had a similar rule in place (Denmark, the UK, and the United States), but later decided to gradually phase it out, for reasons that will be detailed below. Four other countries were reportedly introducing similar regulatory budgeting systems in 2020: Poland, Romania, Slovakia, Slovenia. Below, we illustrate in detail the experience of larger countries such as France, Germany, Italy, Canada, Mexico, Korea, Spain, and the United Kingdom.

A. Canada

In Canada, the reduction of administrative burdens has been an area of focus since the launch of the Red Tape Reduction Commission in 2011. The Commission’s Recommendations Report was released in January 2012 and detailed 15 systemic changes and 90 department-specific solutions to reduce or remove “regulatory irritants.” The Government of Canada took specific actions in response to the Report.⁶ The so-called “one-for-one” rule is highly formalized and accompanied by *ad hoc* policies and guidance issued by the Treasury Board of Canada Secretariat.

The Canadian one-for-one rule applies to all regulatory changes that impose new administrative burdens on business⁷. All federal regulations are generally included, but primary legislation issued by the legislative branch of the government (i.e., Parliament) is not included. When a department intends to seek approval for a new regulation or to

⁶ In particular, the Government’s October 2012 Red Tape Reduction Action Plan included a commitment to operationalize the one-for-one rule, and this commitment was later reaffirmed in the October 2013 Speech from the Throne. The rule was rooted in the Red Tape Reduction Act introduced in January 2014 in Parliament to control the administrative burden that regulations impose on business. The Act received Royal Assent on April 23, 2015. The Red Tape Reduction Regulations were enacted on July 23, 2015 to operationalize the rule. In September 2018, the Cabinet Directive on Regulation was introduced, replacing the 2012 Cabinet Directive on Regulatory Management as the Government of Canada’s policy for the regulation-making process. Subsection 5.2.4 of the 2018 Cabinet Directive on Regulation states that regulators must comply with the one-for-one rule and must identify and estimate the cost of administrative burden impacts of regulatory proposals on Canadian businesses, as set out in the Red Tape Reduction Act and the Red Tape Reduction Regulations. Further detailed information can be found in Section 7 of the Policy on Limiting Regulatory Burden on Business. See <http://www.reducedtape.gc.ca/heard-entendu/rr/rrtb-eng.asp>.

⁷ 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”.

amend an existing one, it must engage the Regulatory Affairs Sector of the Treasury Board of Canada Secretariat at the earliest stages of regulatory development so that its level of impact can be determined. At this “triage” stage, the Regulatory Affairs Sector will provide an early indication as to whether the rule applies. Whenever a new regulation or an amendment to an existing regulation imposes new administrative burdens on businesses, departments are required to monetize and offset those costs with equal administrative burden reductions within 24 months of approval.⁸ In monetizing “ins” and “outs”, departments are required to use an *ad hoc* Regulatory Cost Calculator; and to consult affected stakeholders to validate estimates.⁹

The Red Tape Reduction Regulations authorize the Treasury Board to exempt regulations from the requirement to offset administrative burdens. The three categories of exemption are: (i) regulations related to tax or tax administration; (ii) regulations that implement non-discretionary obligations;¹⁰ and (iii) emergencies and crisis situations or other unique, exceptional circumstances.

After the consultation of stakeholders on the estimated changes in administrative burdens, departments prepare their regulatory submissions to obtain the approval of the Treasury Board. Following approval, the proposed regulatory change is pre-published in the Canada Gazette, Part I.¹¹ At the pre-publication stage, regulators receive public comments on the proposed regulatory change; this provides a final opportunity for refinements before the proposal is finalized. Once adjustments are made to address public comments, the proposed regulation is submitted to the Treasury Board for final approval. If approved, it is registered and published in the Canada Gazette.¹²

B. France

In France, after piloting the Standard Cost Model in 2004, the government decided to rely on a simpler method to continue monitoring the evolution of administrative burdens.¹³ In 2013, the government introduced a *gel de la réglementation* (regulatory

⁸ A regulation must be amended or repealed in accordance with section 5 of the Act within 24 months after the day on which a regulation that imposes a new administrative burden is registered. If a regulation has been amended or repealed before a regulation that imposes a new administrative burden is made and the prior repeal or amendment offsets the cost of the new administrative burden that is imposed, one or more regulations do not need to be amended or repealed.

⁹ The Red Tape Reduction Regulations introduced in 2015 a specific formula for the calculation of the administrative burdens within the OIOO rule. The burden equals the sum of the cost of each activity expected to be completed during the first 10 years after the regulation is registered.

¹⁰ 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.

¹¹ Not all regulations are pre-published, however, as Treasury Board can exempt regulatory proposals from pre-publication. When considering approval to pre-publish, Treasury Board (Part B) decides on the application of the rule and whether to exempt the proposal from the requirement to offset based on the categories above.

¹² See Treasury Board of Canada Secretariat, Annual Report for the 2020 to 2021 Fiscal Year: Federal Regulatory Management Initiatives, available online at <https://www.canada.ca/en/treasury-board-secretariat/corporate/reports/annual-report-2020-2021-fiscal-year-federal-regulatory-management-initiatives.html#appB>

¹³ The Oscar database, developed to take account of the administrative burden of new regulations, implies a “net” target. Oscar uses reference data collected from DGAFP (*Direction générale de l’administration et de la fonction publique*), the INSEE statistics office, and the Budget Directorate on the hourly costs of civil servants and the cost

freeze) that involved the creation of a Business Simplification Council (January 2014) and the appointment of a Minister of State for State Reform and Simplification attached to the Prime Minister (June 2014). Since 2015, the government has been considering the adoption of an OIXO approach to regulation. Initially, departments were required to follow an OIOO rule by both offsetting the increase in costs to businesses and removing (or, if not possible, simplifying) an existing regulation when a new one was enacted. The system also includes costs to local governments and citizens.

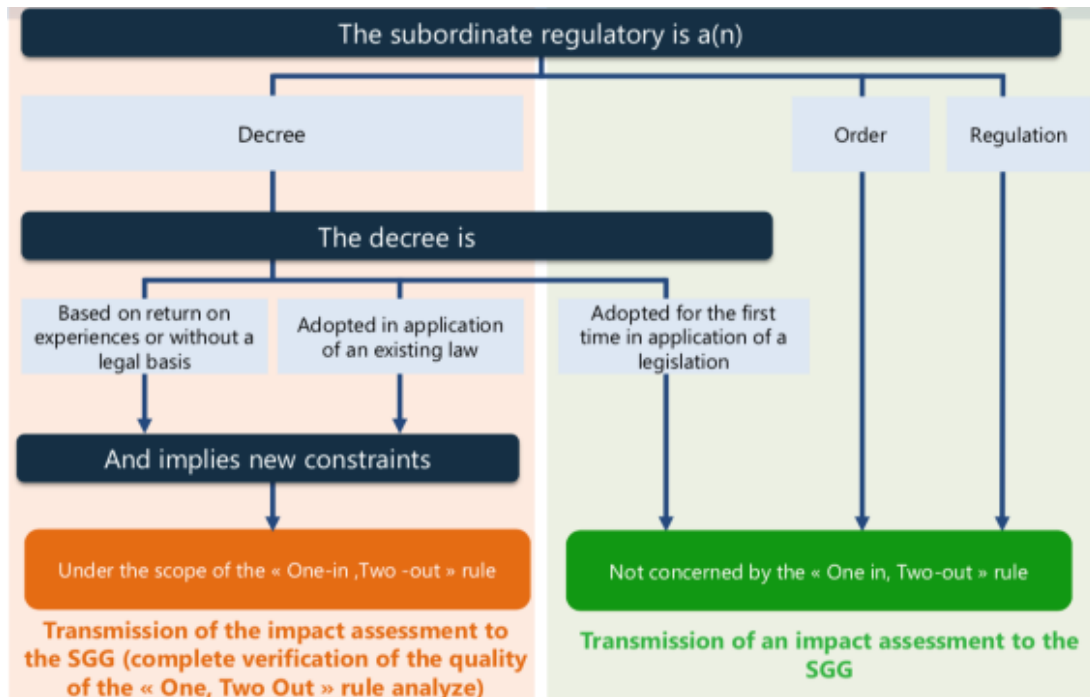
The rule was then transformed into a one in, two out (OI2O) rule with the introduction of the *maîtrise du flux des textes réglementaires* (control of the flow of regulatory texts) by the government in 2017.¹⁴ The French model was formally introduced by a “circular” adopted on July 26, 2017, on the control of regulatory texts and their impact, which aims at controlling normative production so as to limit the negative effects on business (competitiveness), local authorities (administration), local services (operation), and citizens (daily life). To this end, “any new regulation must be offset by the elimination or, if impossible, the simplification of at least two existing regulations.” The General Secretariat of the Government (SGG) must ensure compliance with the application of this circular to ministries, and it arbitrates disputes.

The SGG ensures compliance with the two requirements of the OI2O rule: (1) that the two repealed or simplified regulations belong to the same departmental field or fall within the framework of the same public policy as the new regulatory measure, and (2) that the rules appear qualitatively of equivalent level (for example, they are all decrees, or all subordinate regulations). The rule also establishes an inventory of rules for each department according to its public policy field, overseen by the SGG.

of company employees for each socioprofessional category and sector of activity. Furthermore, the database resulting from the work of the MRCA (Measure to Reduce the Administrative Burden) provides preliminary information on both one-off and ongoing compliance costs.

¹⁴ 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.

Figure 2 – OIOO in the French System



Source: French SGG (2018)

The OI2O rule 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 (e.g., 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 (See Figure 2). The SGG is responsible for ensuring compliance with the OI2O rule, centralizing the elements of costs and quality control (via the impact sheets that are systematically addressed to it), and reporting semiannually the growth of the costs and the savings obtained. 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.

The French system stands out from other systems adopted in the EU, since it requires regulatory offsetting by means of the repeal or simplification of two existing rules, rather than one. Therefore, similarly to the rules adopted in the U.S. during the Trump administration, it is an OIOO rule in terms of volume of costs and an OI2O rule in terms of number of regulations.

C. Germany

Germany has adopted a strategic approach to regulatory cost reduction since 2006. Between 2006 and 2013 it successfully implemented a reduction target of 25% regarding administrative burdens for businesses. The council of ministers’ decision on January 27, 2010, reinforced the reduction target. In 2006, a National Regulatory Control Council

(NKR) was introduced to provide independent oversight of the respective numbers and figures in the Impact Assessments and to support the government's efforts to meet its target. The government met its net reduction target in 2013, and since then a Bureaucracy Cost Index has been maintained, which keeps track of new additions and reduction in regulatory costs.

The German experience has shown that bureaucracy costs ensuing from information obligations account for only a small part of the follow-up costs incurred by federal regulations, leading to an expansion of the scope of the reduction efforts to cover compliance costs as well. The "Bureaucracy Reduction and Better Regulation" policy has thus been significantly expanded, as has been the mandate of the NKR. In December 2014, the federal government launched new initiatives for further reducing the bureaucratic burden on small and medium-sized enterprises. One of these key points is the introduction of the OIOO rule, aiming to "restrict the proliferation of red tape in the long term without hindering political projects." Further, those measures specifically outlined in the coalition agreement must not be obstructed or delayed.

The "one in, one out" rule generally applies to all regulatory proposals from the federal government that impact the recurring compliance costs of business. Exemptions apply to proposals which:

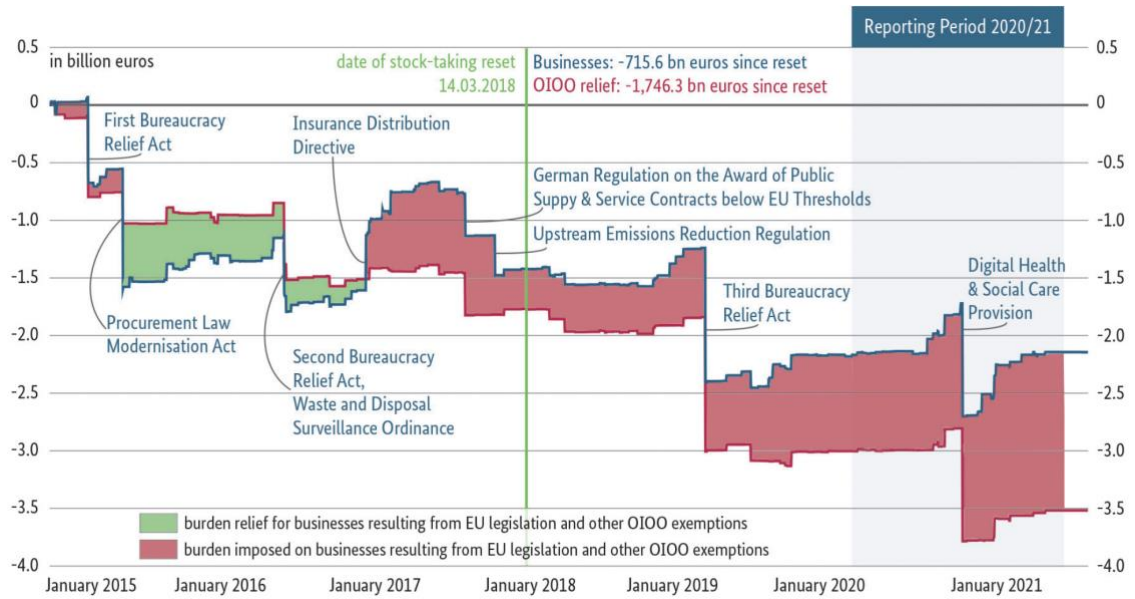
- constitute an exact (1:1) implementation of EU legislation, international agreements or rulings by the Federal Constitutional Court and Court of Justice of the European Union;
- address substantial security threats; or
- have impacts that are time-limited (up to one year).

All measures were based on a common methodology.¹⁵ Government departments report to the State Secretaries Committee on Bureaucracy Reduction every six months on progress made, difficulties encountered, and any imminent failure to meet targets with regard to the planned reduction measures. The federal government must then report annually to the German Bundestag, and in liaison with the NKR it reviews and (if necessary) revises the procedure for identifying and expressing compliance costs.

The OIOO rule has had a tangible effect so far, resulting in a net relief of approximately 3.5 billion euros for businesses since its introduction in 2015. However, the German government argued that EU legislation, which is currently not subject to the OIOO rule, added regulatory costs for an additional annual "in" of 0.5 billion euros (2015–2021) to this equation. Figure 3 below shows the burdening (marked in red) and the relieving impact (marked in green) of the implementation of EU directives on businesses. Furthermore, the current relief arising from national legislation can be partially or completely offset by burdens that are currently exempt from the OIOO rule.

¹⁵ For administrative burdens, the Standard Cost Model. For compliance costs, a common methodology based on the SCM. For a more detailed description, see Andrea Renda et al. *Assessing the Costs and Benefits of Regulation*, *supra* note 2. In that study, all other types of costs and benefits are given a detailed description.

Figure 3 – One in one out monitor in Germany: results 2015-2021



Source: Normenkontrollrat (2021)¹⁶

Importantly, the German OIOO rule includes only ongoing compliance costs, excluding so-called “one-off costs.” However, one-off costs are also calculated and reported by the NKR. The latest Annual Report of the NKR mentions that while the recurrent compliance costs to businesses have decreased in the present reporting period, businesses had to face one-off compliance costs amounting to 5.8 billion euros, far greater than in the previous reporting periods. A similar spectacular increase occurred in the one-off compliance costs faced by public administrations. As reported by the NKR, “this is largely due to the interim measures concerning the COVID-19 pandemic which are also included in one-off compliance costs.”¹⁷

The OIOO process is coordinated by the State Secretary Committee for Bureaucracy Reduction led by the Minister of State with the Federal Chancellor; the NKR verifies the quality of cost estimations provided by ministries, providing an independent oversight.

In terms of the specific design features of the German model, the following can be observed.

- *Compensation is specific to the target sector.* Any increase in recurrent compliance costs for businesses can only be compensated for by a reduction in recurrent compliance costs for businesses.
- *Possibility of exemptions.* If there is a political will to regulate, but no prospects of identifying the offset within the competent ministry’s portfolio, a ministry can ask

¹⁶ See Annual Report 2021 of the National Regulatory Control Council pursuant to Section 6 (2) of the National Regulatory Control Council Establishment Act. Available online at <https://www.normenkontrollrat.bund.de/resource/blob/656764/1960670/ae6c9535f5bec8f248cc72bb86a1214e/210916-annual-report-2021-data.pdf?download=1>.

¹⁷ *Id.* at 14.

the steering group of state secretaries (representing all ministries) for an exemption, but it needs to secure the approval of the NKR. None of the ministries has used this option so far. Moreover, the State Secretaries Committee on Bureaucracy Reduction can cap the amount of compensation required (1) if the new increase in compliance costs demonstrably exceeds the capacity of the relevant ministry to offset the burden, (2) if the compliance costs as presented do not adequately reflect direct cost reductions that could be expected, or (3) if the regulatory proposal will otherwise benefit the business community. Before the State Secretaries Committee decides on any plan to cap compensation, it must consult the NKR on whether the planned compensation, particularly the compliance costs, has been presented reasonably and plausibly.

- *Ministry-specific compensation.* The lead ministry for the respective individual provision is responsible for the compensation. If that department cannot identify any possible way of balancing out the increase or demonstrate that it has achieved a suitably significant reduction with previous proposals, then it may—either bilaterally or in the State Secretaries Committee on Bureaucracy Reduction—ask other government departments to take on the task.
- *Temporal dimension.* Where a proposal increasing the bureaucratic burden cannot be balanced out with immediate effect, the plan or prospects for compensation are explained either in the explanatory or covering note or by some other suitable means. The usual time limit for compensatory measures to be presented is one year. The aim is to limit the rise in compliance costs within the legislative term.

As observed in a recent OECD report, in Germany the OIOO rule was introduced with the aim to raise regulators' awareness of the issue of compliance costs by linking the responsibility of calculating costs and finding offsets to the "owner" of the regulation.¹⁸ This implies that the prospect of complying with the OIOO rule provides incentives to the administration to control regulatory costs while adopting socially and economically beneficial regulation.

D. Korea

In Korea, a "Cost-in, Cost-out" (CICO) system formally entered into force in July 2016 by ordinance of the Prime Minister, after its launch as a pilot in 2014. CICO is a mechanism to restrict the increase of the costs of newly introduced or reinforced regulations by abolishing or relaxing regulations that carry equal or greater costs. As of late 2018, 27 central administrative agencies have adopted CICO concerning regulations that generate direct costs for profit-seeking activities of any individual or business. Since CICO requires the responsible agency to conduct a cost-benefit analysis for outgoing regulations that offset the costs of newly introduced regulations, there is a built-in mechanism to reassess the validity, rationality, and appropriateness of the existing regulations.

The CICO system entails a different calculation compared to the one used in the general Regulatory Impact Analysis carried out in Korea. In particular, the system looks

¹⁸ See Daniel Trnka and Yola Thuerer, *supra* note 3.

only at the direct burdens added and subtracted by new legislation. In this respect, this system does not cover the broader, indirect impacts on the economy resulting from regulation. Table 1 below shows an illustration of this difference.

Table 1 – Calculation of net benefits in RIA and CICO system in Korea

	Benefits		Costs	
Regulatees	A	B	W	X
Others (general public and government)	C	D	Y	Z
RIA System: $(A + B + C + D) - (W + X + Y + Z)$				
CICO System: $A - W$				

Source: OECD and KDI (2017)

The following cases are exempted from the CICO program:

- Regulations necessary for dealing with a national crisis or emergency.
- Regulations required to implement treaties or international agreements.
- Regulations directly related to maintenance of order, public life, or 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 one year.

Approximately 72% of new regulations established during the pilot project were subject to an exemption.¹⁹ In the CICO system, banking is allowed (i.e. extra savings can be carried forward to the following year), whereas trading is not allowed (i.e., “Outs” must be found in the same policy areas as the “Ins”); and the agency increasing regulatory costs is itself responsible for finding necessary offsets. In the pilot tests of CICO, started in July 2014, 15 ministries analyzed and abolished (or relaxed) 28 existing regulations in exchange for 24 newly introduced ones. In July 2016 the CICO system was introduced in full force, covering 27 agencies in total. All ministries and agencies must evaluate their CICO performance semiannually. The Regulatory Reform Office compiles this information and submits it to the central oversight body, the Regulatory Reform Committee. CICO is one of the factors that play a role in the evaluation of the ministries’ performance. The results are published online. Interestingly, ministries are graded based on their performance and financially rewarded for very good performance. The RRC submits an annual report to the National Assembly in which one chapter is dedicated to CICO.

¹⁹ OECD (2017), *Regulatory Policy in Korea: Towards Better Regulation*, OECD Reviews of Regulatory Reform, OECD Publishing, Paris, <https://doi.org/10.1787/9789264274600-en>.

The key advantages of the CICO system in Korea include greater awareness of public authorities of the need for ex-post evaluation of regulation, because evaluation helps identify the rules to eliminate when new regulation is proposed. Administrations also reportedly have the incentive to replace old regulations with more efficient ones over time. Initially thought to be costly, the system proved to be cheaper than other ex-post evaluation mechanisms. And a recent study jointly undertaken by the OECD and the Korea Development Institute found CICO's impact on RIA quality to be positive.²⁰

E. Italy

The Italian Government has used an OIOO rule since 2011. The “*Statuto delle Imprese*” (Law of November 11, 2011, n. 180, article n. 8) provided a stock-flow control mechanism for administrative burdens, introducing the OIOO rule in the annual regulatory budget.²¹ To foster the implementation of the rule, in 2013 the Department of public administration published guidelines on administrative burdens helping public administrations in identifying costs and defining the regulatory budget. The OIOO rule applies to both primary and secondary legislation and does not apply to independent agencies. It applies to administrative burdens only, not substantive compliance costs. It applies both to citizens and businesses, despite the fact that it was introduced by a law dedicated to businesses. The rule is cost-based: it does not require that for every new regulation introduced, existing regulations are removed, but it requires that the total amount of new administrative burdens introduced every year be offset by an equivalent amount of costs to be removed in the same sector. The application of the rule is limited to administrative burdens. The rule does not take into account the benefits introduced by new regulation nor those of the regulations that are repealed.

The Italian OIOO rule allows for offsetting to take place also by modifying (thus, not necessarily repealing) existing regulations. The rule does not allow for banking regulatory costs. Each Ministry chooses the regulations to be repealed or simplified, and there are no specific provisions about the qualitative criteria that must be used to offset new costs. The repealed rules must fall in the same policy area as the ones that are introduced. Fiscal, tax, and public games and lotteries regulations are exempted. According to the *Statuto delle imprese*, each Ministry is required—by January 31 of each year—to submit to the Prime Minister's office a report on the total amount of newly introduced or eliminated administrative burdens on citizens and businesses by the regulatory acts approved during the previous year²². The Department of Public Administration in the Prime Minister's office prepares, both on the basis of these reports and considering the results of ad hoc stakeholder consultations, a comprehensive report

²⁰ OECD/KDI (2017), *Improving Regulatory Governance: Trends, Practices and the Way Forward*, OECD Publishing, Paris, <https://doi.org/10.1787/9789264280366-en>. The sparse academic literature available appears to be less enthusiastic.

²¹ See Senato della Repubblica, Servizio per la qualità degli atti normativi, Ufficio per la verifica della fattibilità amministrativa e per l'analisi di impatto degli atti *in itinere* (2017), *La riduzione degli oneri amministrativi*, edited by Stefano Marci, available online at <https://www.senato.it/service/PDF/PDFServer/BGT/01044562.pdf>

²² Paragraph 2, Article 8 of the Statuto delle Imprese, as modified by decree-law n. 5 of 2012, provides that by January 31 of each year, state administrations must send to the Presidency of the Council of Ministers a report on the overall balance of administrative burdens, including a detailed description of those introduced and eliminated for citizens and businesses.

containing the annual budget of the newly introduced or reduced administrative burdens, by each Ministry. The report is published on the Government's institutional website by March 31 of each year. If the administrative burdens introduced are higher than those reduced, the Government is allowed to provide for the corresponding offsetting, adopting, within ninety days after the publication of the report, one or more regulations for removing an equal amount of administrative burden costs from the existing stock of regulations. Regulatory offsetting measures have to undergo an impact assessment.

The Italian experience has remained relatively hidden over the past years, and the OIOO rule never achieved the prominence it has in countries like Germany. At the same time, the relative under-development of other better regulation tools, such as ex ante RIA, make this national experience less successful when it comes to the overall mainstreaming of the OIOO rule in the culture of the administration.

F. Mexico

In Mexico, the new General Law on Better Regulation includes the adoption of an OIOO rule, which is implemented by the new National Commission for Better Regulation (CONAMER) in the Federal government. Art. 78 of the new law aims directly at reducing, or at least avoiding increases in, the regulatory stock. Based on the new law, the OIOO rule requires regulators to expressly indicate in their regulatory proposals the regulatory obligations or acts to be modified, abrogated or derogated; that the corresponding impact on cost is zero or negative; and that the acts or obligations to be eliminated are related to the same subject matter or regulated sector than the ones introduced.

Additionally, based on the Presidential decree dated March 8th, 2017, the federal government initially applied a similar version of the OIOO rule, which requires regulatory authorities to eliminate two regulatory actions or administrative acts in the same economic sector, as a condition for issuing a new regulation.²³ This initial rule, as a result of the 2017 Presidential Decree, is still valid for Federal regulatory proposals and the CONAMER currently makes a joint interpretation of both versions of the OIOO. As of March 30, 2020, the government of Mexico had received 4,032 regulatory proposals, and the OIXO measure had reduced the cost of compliance for citizens by USD 13.70 billion.

The OIOO rule generally applies to all national regulations imposing direct compliance costs to individuals. However, the following regulations can be exempt from both versions of the OIOO rule:

- Regulations that address an emergency, 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.

²³ It must be emphasize that this rule might not be interpreted as an "one in two out" (OI2O) rule because the spirit of the Presidential decree was to verify that, for each new regulatory proposal, there would be at least a reduction in the compliance cost for the individuals by eliminating two regulatory obligations or acts (including procedures), with a greater emphasis on the amount of cost saved by eliminating these regulatory obligations or acts.

- Regulations with automatic sunset or evaluation clauses.
- Regulations related to the disbursement and operation rules of the Federal subsidies.
- Regulations issued by the President.
- When the regulator proves that the economic sector to be affected by the regulatory proposal does not have current regulations to be eliminated in order to comply with the OIOO rule. In this case, the regulator can request CONAMER to exempt the measure from the OIOO rule.

Exceptions seem, however, to have quickly become the rule in the Mexican system. In the period of March 9th, 2017 to October 31st, 2019, only 13.7% of the total of new Federal regulatory proposals received by CONAMER were subject to the OIOO rule.²⁴ Since its introduction, the OIOO rule has shown the following statistics: between March 9th, 2017 to October 31st, 2019 CONAMER reported USD 517 million of new regulatory compliance costs, and almost USD 15.8 billion of savings, leading to net savings of USD 15.3 billion²⁵.

Several lessons have emerged as a result of the implementation of OIOO rule in Mexico. First, the rule has become an effective way to differentiate relevant regulations from those that are not, since regulators are not willing to comply with their OIOO obligations in the case of unnecessary new regulations. With this tool, the oversight authority can easily identify the impact of the new regulatory proposals. Second, the implementation and interpretation of the OIOO by the oversight authority has avoided the dismantling of the regulatory stock to comply with the OIOO; the rule focuses on avoiding increases in regulatory costs, rather than on reducing the number of regulations. Third, the implementation of the OIOO rule has allowed for a systematic increase in the quality of regulatory impact analysis and also has improved the quality of the human resources dedicated to performing this type of analysis. Fourth, the adoption of the OIOO rule should not prioritize cost reductions over the pursuit of the public interest. Fifth, the statistical evidence of this policy after two years of implementation confirms its success since the savings generated would not have been achieved by another mechanism.

G. Spain

In Spain, regulatory offsetting was introduced by Law 14/2013, of September 27th, of support for entrepreneurs and its internationalization (article 37). The Council of

²⁴ Between March 9th, 2017 to October 31st, 2019, the CONAMER received 3466 new regulatory proposals from which 2990 (86.3%) were applicable to the exceptions included in the OIOO rule or were regulatory proposals that didn't generate compliance costs to individuals.

²⁵ Source: internal statistical reports in CONAMER. During this period, over 80% of the reduction in compliance costs (12,662.5 million dollars) was result of a regulatory proposal issued by the National Banking and Securities Commission about "Financial Hybrid Limits" (Resolution modifying the general provisions applicable to the institutions of credit), in which at least 4 provisions of current regulatory obligations were repealed as part of the OIOO rule. The consequence was more flexibility in the use that credit institutions could give to their capital, so, the credit institutions were able to put more resources in the financial market and that financial profits could not be generated if they had to be placed as capital, as it was stipulated in the initial provisions. The repeal of provisions as a result of the OIOO rule implied that credit institutions could generate additional profits in the market of around 12,662.5 million dollars per year.

Ministers Agreement of January 30th, 2015 lays down measures to strengthen the monitoring of the principle of compensation of administrative burdens. No modification has been put in force since then. Law 14/2013 “On Support For Entrepreneurs And Their Internationalization” introduced a OIOO principle limited to the offsetting of administrative burdens for businesses: “When public administrations create new administrative burdens for companies, at least one existing burden of equivalent cost will be eliminated” (Article 37). Some regulations that are exempted from the mechanism include:

- 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; and
- Regulations with temporary validity (especially those with an annual term).

Spain uses direct administrative burdens 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 Method.” According to the Council of Ministers Agreement of January 30th, 2015, the annual global increment of administrative burdens in each ministry must be compensated by the same ministry during the following year. Each ministry chooses the rules to be repealed considering the exceptions set by the Council of Ministers. Offsetting rules do not necessarily have to fall in the same policy area; ministries can choose from their whole portfolio of competences. The offsetting is explicitly announced in the impact assessment of the new regulation that introduces new burdens. The offsetting measure is not subject to an impact assessment. However, if the provisions to be repealed had been originally accompanied by an impact assessment at the moment of their adoption, the compensatory regulation that replaces them should also be accompanied by an impact assessment.²⁶

The overall experience of the Spanish government with OIOO was reported as positive. The administration became more attentive to burdens and improved the quality of ex ante impact assessments (particularly the level of cost quantification) and of the regulatory management process.

H. The United Kingdom

The United Kingdom features one of the most well-established experiences and traditions in the field of better regulation, which enables it to reach a greater degree of sophistication in the analysis of the costs and benefits of regulation. After a partly successful experience with the baseline measurement of administrative burdens in 2005-2006, initiatives aimed at monitoring and reducing regulatory costs have proliferated, including the introduction, in 2010, of an independent body, the Regulatory Policy Committee (RPC), to validate the costs and benefits of all new regulatory and de-

²⁶ Moreover, according to article 26.9 of Law 50/1997, of November 27, on the Government, the Ministry of Presidency, Parliamentary Relations and Equality assesses the need to include an expressed derogation, as well as the need to consolidate other texts in the same field. These functions are currently developed by the Office for Regulatory Coordination and Quality according to the Royal Decree 1081/2017, of December 29.

regulatory proposals.²⁷ In 2011, an OIOO rule was introduced. Over the 2011-12 period, government departments, not only met the target, but exceeded OIOO, removing around £963 million more in business burdens than they introduced according to the UK Regulatory Policy Committee. Since 2013, the UK has operated a 'One-in, Two-out' (OI2O) regulatory management system. The premise is that for every net £1 in regulatory cost introduced by domestic regulation, departments would need to find twice the amount of savings. The OI2O rule required an even stronger performance from departments compared to the previous rule.

With the change of government in 2015, the agenda changed. The Small Business, Enterprise and Employment Act 2015 required the Government to publish a Business Impact Target (BIT) for the duration of each Parliamentary term, obtain independent verification of the economic impact of new regulation, and report regularly on progress against the target. The Cameron government extended the scope of the BIT in the Enterprise Act 2016 to include the activities of statutory regulators that have an impact on business.²⁸ In March 2016, the Government announced new measures to cut a further GBP 10 billion of red tape, including moving to a 'One-in, Three-out' OI3O rule to be achieved by departments for them to deliver the BIT.²⁹ In addition, the "Cutting Red Tape" initiative led to the creation of an online website dedicated to interaction with stakeholders on areas that should be prioritized in this respect. The offsets identified in the UK system "often do not actually remove any regulatory requirements, but rather make regulatory compliance less costly, for instance by streamlining paperwork processes so that businesses could make some filings without the need of a lawyer."³⁰ Notably, before Brexit, European Union regulations and directives have been exempted from this requirement. The U.K. government reports that its regulatory offsetting policies have reduced both the number of regulations and the associated costs to businesses.

However, after the Brexit referendum the popularity of the OI3O rule has decreased in the UK. The criticisms raised are related both to the representativeness of the costs included in the analysis and to the overall salience and soundness of the whole exercise. The UK National Audit Office (NAO) reviewed the system in 2016 and concluded that while the system has successfully raised the profile of regulatory costs imposed on businesses across government, the bulk of regulatory costs had not been included in the analysis, and departments had not done enough to appraise the wider impacts of their

²⁷ For a description of the early UK experience in 2005-2006, see Andrea Renda, *One Step Forward, Two Steps Back? The New U.S. Regulatory Budgeting Rules in Light of the International Experience*, 8 JOURNAL OF BENEFIT-COST ANALYSIS 291-304 (2017).

²⁸ The Enterprise Bill is available online at <http://services.parliament.uk/bills/2015-16/enterprise.html>.

²⁹ See Appendix 4: operating a 'one in, two out' rule for business regulation, available online at <https://www.gov.uk/government/policies/reducing-the-impact-of-regulation-on-business/supporting-pages/operating-a-one-in-two-out-rule-for-business-regulation>. The independent Regulatory Policy Committee publishes its Opinion on all ex ante assessments, including whether it has validated OI2O measures from departments. See the opinions expressed at <https://www.gov.uk/government/policies/regulatory-policy-committee-opinions-on-impact-assessments>.

³⁰ Ted Gayer, Robert Litan & Philip Wallach, Evaluating the Trump Administration's Regulatory Reform Program, Brookings Institution (2017), https://www.brookings.edu/wpcontent/uploads/2017/10/evaluatingtrumpregreform_gayerlitanwallach_102017.pdf. See also Jitinder Kohli, What President Trump Can Learn from the UK about Reducing Regulations, FORBES, January 27, 2017.

decisions, or to evaluate their effects³¹. This, the NAO added, “harms the credibility of claimed savings and reduces opportunities to learn from past experience” (NAO 2016). Even more negative was the comment of the House of Commons’ Committee on Public Accounts, which released in September 2016 a rather critical report on the UK better regulation agenda, including the regulatory budgeting and OI2O system.³² The Committee observed *i.a.* that the whole exercise failed to consider the wider costs and benefits of regulation.

The rule is now being given lower priority compared to other better regulation initiatives of the government, including the Business Impact Target and the promotion of innovation through smart regulation. This is also due to the fact that simplification initiatives have been underway for several years, whereas other instruments have been less strongly pursued by the government, and deserve now priority.

I. *The new European Union OIOO rule*

In the European Union, the European Commission (the institution that initiates new legislative and regulatory proposals) has traditionally been very reluctant to introduce a OIXO rule.³³ This is understandable, also since it has limited control of what its co-legislators, the Parliament and the Council, do in terms of introducing costly amendments on its proposals; and since regulatory costs can also depend on the way in which EU Member States transpose and implement legislation (especially in the case of so-called gold-plating or double banking practices). In 2019, however, the newly elected President of the European Commission, Ursula von der Leyen, announced her intention to introduce the OIOO principle “to cut red tape.”³⁴ She stated that “the Commission will develop a new instrument to deliver on a ‘One In, One Out’ principle,” adding that “every legislative proposal creating new burdens should relieve people and businesses of an equivalent existing burden at EU level in the same policy area”; and that the

³¹ The NAO observed that “the government’s measure excludes over £8 billion in costs to businesses during this Parliament so far, many times greater than the £0.9 billion of savings it includes”; and “[l]imitations in the approach means the scope of the Target is open to manipulation.” Moreover, the NAO added that departments do not do enough to appraise the wider impacts of their decisions, or to evaluate their effects. This, the NAO adds, “harms the credibility of claimed savings and reduces opportunities to learn from past experience.” See National Audit Office, *The Business Impact Target: cutting the cost of regulation*, 2016. At <https://www.nao.org.uk/wp-content/uploads/2016/06/The-Business-Impact-Target-cutting-the-cost-of-regulation.pdf>.

³² The Budget Committee criticized the methodology used to achieve the reduction target is not sound: in particular, in noting that that “[t]he Government’s limited progress ... relies, ironically, on the imposition of a new regulation requiring larger retailers to charge customers 5p for plastic bags,” the Committee explained that classifying the plastic bag charge as a saving to business because it brings additional revenue to retailers is largely incorrect: “[w]ithout the plastic bag charge, performance against the Business Impact Target ... would show a net additional cost to business rather than a reduction.” See House of Commons Committee of Public Accounts, *Better Regulation Eighteenth Report of Session 2016–17*, available online at <https://www.regulation.org.uk/library/2016-PAC-Better-Regulation.pdf>.

³³ Andrea Renda, Moritz Laurer, Ada Modzelewska, Antonella Zarra, *Introducing One-In-One-Out in the European Commission, a Feasibility Study*, report for the German Government, December 2019.

³⁴ See the inaugural speech of Ursula Von der Leyen, 10 September 2019, at https://europa.eu/rapid/press-release_IP-19-5542_en.htm.

Commission “will also work with Member States to ensure that, when transposing EU legislation, they do not add unnecessary administrative burdens.”³⁵

Notwithstanding the pandemic, the commitment seems likely to see its first implementation in the second half of 2021. A recent Communication on better regulation, “Joining forces to make better laws,” announced that the Commission will “strengthen the burden reduction effort further through a ‘one in, one out’ approach whereby, when introducing new burdens, we systematically and proactively seek to reduce burdens imposed by existing legislation.”³⁶ The Commission also warned that an approach solely oriented towards cost reduction “has significant drawbacks”; accordingly, already in 2012 a REFIT program was introduced, which focuses on balancing costs with benefits when legislation is being revised. This ensures that the original motivation for legislation, i.e. its prospective benefits, is kept always in due consideration. The OIOO approach will now complement the REFIT program by helping the European Commission pay special attention to cumulative costs for individuals and businesses in a given policy area and by covering new initiatives.

The OIOO approach presented by the Commission is still rather vague, but the following features are already defined:

- No trading. Offsets will normally have to be found in the same policy area. However, if it is not possible to find an ‘out’ in the same area, the Commission can decide to take the ‘out’ from a different policy area.
- Focus on cumulative costs. The approach will widen the focus from burdens stemming from specific legislative acts to the accumulation of burdens in each policy area and thus give a better overview of costs across policy areas every year. While administrative costs will be offset, compliance costs will be analysed and quantified in the impact assessments, where this is feasible and proportionate.
- Fostering enhanced attention to costs. The Commission acknowledges that national experience shows that OIOO rules strengthen “a policymaking culture that not only ensures that we achieve our policy objectives, but also pays closer attention to how we do so.” In particular, the OIOO rule is expected to incentivize policymakers to look for digital solutions, thereby reducing costs and improving the quality of regulation.
- Flexibility in the implementation. The rule will not be applied mechanically. The Commission states that “if an ‘out’ cannot be identified in the same year’s work programme, it will be reported in the next year.” In general, the Commission will report on the annual implementation of the OIOO approach in its Annual Burden Survey, towards the end of the solar year.

³⁵ See the mission letter sent by President Von der Leyen to Vice President Maroš Šefčovič, at https://ec.europa.eu/commission/commissioners/sites/default/files/commissioner_mission_letters/mission-letter-maros-sefcovic-2019_en.pdf

³⁶ Communication from the Commission to the European Parliament, the Council, the European and Social Committee and the Committee of the Regions, Better Regulation: Joining forces to make better laws, at https://ec.europa.eu/info/sites/default/files/better_regulation_joining_forces_to_make_better_laws_en_0.pdf.

- Exceptions. If there is political will to regulate but it is not possible to identify an offset in the same area, the Commission can decide to exempt the regulation from the OIOO approach.

J. Comparison of selected national experiences

The analysis of national experiences revealed the heterogeneous landscape of regulatory budgeting rules in the selected countries. Table 2 below summarizes the main findings in this section, adding a description of the U.S. model introduced by the Trump administration. As shown in the table:

- Six out of ten administrations have adopted a OIOO rule, whereas Mexico, France, the UK, and the US having launched OIXO rules with $X > 1$.
- Most administrations go beyond administrative burdens. Canada and Spain, so far, have adopted regulatory budgeting with a narrower scope, but also reported less significant results.
- The scope is most often limited to government regulation rather than extended to primary laws discussed in Parliament.
- Most governments apply the rule flexibly, allowing for offsets within a given timeframe rather than requiring simultaneous identification of the “outs.”
- Most administrations contemplate the possibility of exemptions, especially in cases of urgency, or political will to enact a regulatory proposal in cases where no “outs” can be identified.
- Most administrations do not allow trading across policy areas.

Table 2 – Overview of the experience with OIXO rules in selected countries

Country	Rule	Type of costs covered)	Scope (law)	Regulated entities)	Timing of offsets	Banking	Trading	Exemptions	Experience
Canada	OIOO	Administrative burdens	Secondary legislation	Citizens and businesses	Within 24 months	Yes	No	<ul style="list-style-type: none"> Regulations that implement non-discretionary obligations; Regulations related to tax or tax administrations; Regulations that address emergencies or crisis situations, Or other unique circumstances. 	Impact was relatively small
France	Since 2015 OIOO. Then OI2O in 2017 with Macron	Administrative burdens and substantive compliance costs	National regulations, decrees and circulars	Businesses, Local Administration and services, Citizens	Simultaneous	No	No	Decrees without impact on civil society and decrees that accompany new laws or regulations	First tests did not achieve the desired results. The government decided to move to an OI2O for this reason.
Germany	OIOO	Administrative burdens and substantive compliance costs	Primary and Secondary legislation	Businesses	Within a year's time	No	Yes	Ministry can ask the steering group of state secretaries for an exemption (never happened to date) Taxes and Budget 1:1 transposition of EU-directives Decisions of the Constitutional Court	Positive: ministries became more attentive to costs.
Italy	OIOO	Administrative burdens	Primary and Secondary legislation (but not independent agencies)	Citizens and businesses	Within 90 days after the publication of the annual report	No	No	Fiscal, tax, public games and lotteries regulations are exempted.	Positive experience: it improved quantification efforts.
Korea	OIOO	Administrative burdens and substantive compliance costs	Secondary legislation			Yes	No	<ul style="list-style-type: none"> 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. 	Broadly positive: it has reportedly increased the quality of RIA.

Mexico	OIOO (coupled with OI2O in terms of number of rules)	Administrative burdens and substantive compliance costs	Secondary legislation	Citizens and businesses				<ul style="list-style-type: none"> • 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; • Regulations with automatic sunset or evaluation clauses; • Regulations related to the disbursement and operation rules of the Federal subsidies; • Regulations issued by the President; • When the regulator proves that the economic sector to be affected by the regulatory proposal does not have current regulations to be eliminated in order to comply with the OIOO rule. In this case, the regulator can request CONAMER to exempt the compliance with the OIOO rule. 	
Spain	OIOO	Administrative burdens	Government regulation	Businesses	Within a year's time (offsetting announced in the impact assessment of the "in" regulation)	No	Yes	<ul style="list-style-type: none"> • Transposition of EU legislation or international agreements • Regulations on civil emergencies; • 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) 	Positive: more attention to costs, quality of IAs improved, along with the quality of regulation
The UK	OIOO in 2011; OI2O in 2013; OI3O in 2016 and 2017	Administrative burdens and substantive compliance costs	Primary and Secondary legislation	Businesses				<ul style="list-style-type: none"> • tax administration (particularly Income Tax, Corporation Tax and VAT), • European Union regulation, • the National Minimum Wage (see further below), • the Living Wage (ditto), • the Apprenticeship Levy, • compulsory Workplace Pensions, • fees and charges imposed by government or regulators 	The OIXO rule gradually lost momentum, and is now hardly mentioned in official documents.
The United States	OIOO (OI2O in terms of number of rules)	Administrative burdens and substantive compliance costs	Secondary legislation	Citizens and businesses	By end of fiscal year	Yes	No		
European Union	OIOO	Administrative burdens and substantive compliance costs	Initiatives, that generate significant costs or remove them and are accompanied by an impact assessment	Citizens and businesses	By end of the year	Yes	No (only excepti onally)	If there is political will to regulate but it is not possible to identify an offset in the same area, the Commission can decide to exempt the regulation from the OIOO approach.	Not yet implemented

III. MYTH AND REALITY OF REGULATORY BUDGETING: TEN LESSONS FROM THE INTERNATIONAL EXPERIENCE

Regulatory budgeting rules have been met with strong criticism in various countries, and even more in the European Commission, where these rules have been considered, and rejected, for several years. The harshest critics point out that these rules end up frustrating attempts to develop an ambitious regulatory agenda, especially in social and environmental terms. Especially in Europe, and even more at the EU level, this has been a recurrent theme in the debate, with trade unions and environmental organizations often opposed to industry associations and national governments. A recurrent theme in the debate is also the lack of methodological soundness, due to the fact that several countries make a significant departure from economic analysis and use rather standardized and simplified tables in order to approximate the magnitude of the costs to be introduced or repealed. This is particularly the case in Germany, but also in the Netherlands, the homeland of administrative burdens reduction (via the so-called Standard Cost Model), where no OIXO is in place, but the use of standardized tables to measure administrative burdens and compliance costs is a consolidated practice; and in Mexico, where the SIMPLIFICA model brought this practice to a high level of standardization, in the attempt to reduce the time and resources needed in the administration to complete the assessment of costs. A related critique relates to the accuracy of the cost estimates presented to the public. Particularly in Germany, where the OIOO rule is acknowledged as important by both government and the private sector (much less by NGOs), the accuracy of the estimates is regularly questioned by the industry association (including the Association of German Chambers of Commerce and Industry, DIHK). And in the United Kingdom, as mentioned above, both the House of Lords and the National Audit Office have stigmatized the government's implementation of the OIXO rule.

Furthermore, critics and reluctant administrations have often expressed concern that the rule, to work properly, requires a degree of quantification and monetization of costs that is seldom achievable in practice. As a matter of fact, existing empirical work on the degree of quantification and monetization of costs and benefits in ex ante RIA shows a rather low incidence, with qualitative analysis being most often the most recurrent approach to the assessment of benefits and costs. However, advocates of OIXO rules also argue that the existence of the rule has worked as stimulus for cost quantification. Another recurrent critique points at the lack of legitimacy of these rules, often implemented entirely in the administration, with limited stakeholder consultation. Similarly to the United States, in many countries the rules selected as "out" are often repealed or eliminated by the administration after the compilation of a "black list"; and repealing or revising a rule to offset the cost of another rule often takes place without the need for a fully-fledged regulatory impact analysis. Another critique relates to the need for an extensive, and expensive, baseline measurement of the regulatory costs generated by the relevant stock of regulation. Some countries, e.g. the UK, spent substantial resources commissioning external measurements, the accuracy of which has however proven to be quite disappointing. Today, several governments implementing burden reduction targets and/or OIXO rules agree on the

limited usefulness and value for money of baseline measurements and prefer to set the targets “politically.”³⁷

Finally, administrations such as the European Commission have expressed the concern that the implementation of the rule, by adding at least another layer of administrative procedure, would increase complexity and thereby cause delays in the administration. However, so far no country has reported such an occurrence, perhaps since the implementation of the OIXO rule has been far from mechanistic.

Below, the main lessons learnt from the international experience are analysed, also in light of these critiques.

- Lesson 1.* OIXO rules are not a panacea, but can only bear fruit as part of a broader mix of better regulation instruments. In all countries analysed, the adoption of an OIXO rule does not exhaust the government’s efforts to improve the quality of regulation. OIXO rules are always a piece of a much broader puzzle, which often includes other simplification tools (e.g. burden reduction targets; simplification of administrative procedures; life events surveys); full-fledged *ex ante* impact analysis; *ex post* evaluations; various forms of stakeholder consultation; analyses of the regulatory stock; and many other forms of regulatory scrutiny and oversight. It would be entirely misleading to judge OIXO rules as if they were adopted in isolation, and thus without considering the existence of procedural and methodological arrangements that ensure adequate attention for regulatory benefits, and specific goals such as resilience, well-being, or sustainability.
- Lesson 2.* OIXO rules work best when implemented as a whole-of-government commitment. Rather than confining them to individual policy areas, OIXO rules trigger their behavioral impact in the administration when they are applied across the whole range of government policies, or at least across all areas of business-relevant regulation. Past international experience suggests that this behavioral impact is perhaps the most important alongside the regulatory relief that the OIXO rule may bring about.
- Lesson 3.* OIXO rules, if properly designed, can generate both positive and negative behavioral impacts inside the administration. The European Commission observed in the past that “some national experiences show that if quantitative reduction targets apply, administrations tend to focus on meeting the target rather than seeking to maximize policy benefits.” However, the same institution more recently observed that administrations can become more focused on costs, and more prone to quantification, thanks to the existence of these rules. A well-designed system, with evidence-based assessments of the potential to reduce unnecessary burdens and

³⁷ The national experience to date confirms this view: some baseline measurements have proven to be unnecessarily costly (in the UK, over 15 million pounds; in the EU, 20 million Euros), and the operation of the Standard Cost Model often led consultants into acrobatic guesstimates both in terms of the classification of origin (EU, national, regional), and in terms of the estimation of the so-called “Business As Usual” or BAU Factor, among other parameters. The EU experience in 2007 was similarly disappointing, with a budget of 20 million Euros spent on the mapping of 43 EU directives, which did not retrieve reasonably solid results, and ultimately did not provide for sufficient value for money. See Lorenzo Allio and Andrea Renda, *Evaluating Administrative Burden Reduction Programmes and their Impacts*, in: OECD, *Why Is Administrative Simplification So Complicated? Looking Beyond 2010*, OECD, Paris, 2010.

adequate stakeholder involvement throughout the process, would not feature these problems. Needless to say, the removal of unnecessary burdens will also liberate resources for the private sector: such resources could then be re-invested into more productive activities.

Lesson 4. OIOO rules are the most recurrent and sustainable form of regulatory budgeting rule. Countries that have ventured into higher multipliers, including OI2O and OI3O rules, have experienced a degree of fatigue over time. This is the case of the United Kingdom, and also, to some extent, Mexico. The main reason is that while at the beginning of the implementation of these rules the portion of regulatory stock that can be streamlined and simplified may be significant, over time the opportunities for meaningful reduction of unnecessary costs inevitably shrink; at the same time, priority shifts towards other better regulation tools available to regulators, such as innovation-friendly regulation, based *i.a.* on incentivizing innovative business models (as occurred in the UK).

Lesson 5. If carefully designed, regulatory budgeting rules are not incompatible with an ambitious policy agenda. Some countries have introduced OIXO rules and burden reduction targets in the context of a deregulatory effort. But the fact that these rules have been used in the context of a deregulatory attempt does not mean that they are, *per se*, incompatible with a more far-reaching and proactive approach to deregulation. In Germany, for example, the OIOO rule was adopted in a context in which by ambitious programs such as *Energiewende* are in place, and a systematic scrutiny of the impact of new legislation on sustainable development is carried out. In France, the government uses the OI2O rule but at the same time adopts ambitious proposals in terms of social and environmental benefits. In short, there is no incompatibility *per se* between the adoption of a cost reduction or regulatory budgeting system and an ambitious regulatory and policy agenda in the social and environmental domain.³⁸

Lesson 6. It is important that OIXO rules prioritize the elimination of unnecessary costs. Direct costs are most often introduced in order to achieve benefits.³⁹ However, in some circumstances the existence of overlaps between regulatory provisions, as well as inconsistencies or redundancies between regulatory provisions, can generate “unnecessary” (or “unnecessarily high”) costs.⁴⁰ These are those direct regulatory

³⁸ As already recalled, governments of both right- and left-wing orientation have adopted OIOO rules and burden reduction targets. See Robert W. Hahn and Andrea Renda, *Understanding Regulatory Innovation: The Political Economy of Removing Old Regulations Before Adding New Ones*. Available at SSRN: <https://ssrn.com/abstract=3022552>, 2017. What is important is that the system targets “unnecessary costs,” such as redundant provisions, irritation burdens, and existing provisions that new developments (e.g. digital technologies) can now help simplify, without compromising on regulatory benefits.

³⁹ For example, investments related to compliance with health or environmental standards, such as the purchase of new equipment or the training of personnel, are needed to ensure that the policy objective to improve healthcare or protect the environment is met.

⁴⁰ Some costs can also become unnecessarily high after the entry into force of a given rule: for example, the diffusion of digital technologies can make it possible for regulators to introduce new forms of electronic compliance verification, which

costs that could be reduced or eliminated by policymakers without negative repercussions on the benefits sought by the regulatory intervention. These can also be costs that were considered to be necessary at the time of adoption of the legislation, but that are now unnecessary (or unnecessarily high) due to the availability of new solutions, such as digitally-enabled compliance measures.

- Lesson 7.* OIXO rules are compatible with innovation-friendly tools such as regulatory sandboxes. Whenever existing regulation entails significant compliance costs, and governments transparently publish a list of most burdensome regulation, businesses could be empowered to propose experimental initiatives, which would give them the opportunity to prove that they can comply with the regulation in a less burdensome way. This can lead to so-called “negotiated rulemaking” in some cases (following the U.S. experience); or innovation deals (in the EU), or regulatory sandboxes.
- Lesson 8.* OIXO rules can incentivize widespread, transparent retrospective reviews. The need to scan the regulatory stock to identify regulation for possible repeal or revision is an important incentive for administration to engage with retrospective review.⁴¹ A meaningful OIXO rule could lead agencies to look more carefully into the regulatory stock. This is now being facilitated using innovative tools, such as e.g. Natural Language Processing (NLP), which allows for an easier identification of overlaps between regulatory provisions, and a more immediate clustering of regulatory interventions.
- Lesson 9.* OIXO rules can be reconciled with full-fledged cost-benefit analysis or multi-criteria frameworks. As already mentioned, however, this requires that the rules focus on unnecessary costs, and/or that reduction measures undergo a full RIA. This guarantees that the elimination of regulatory provisions does not entail, at the same time, the elimination of important benefits that accrue to society as a result of the regulation. The design of the rule is, however, essential: a badly designed, or excessively simplified rule can easily depart from the conceptual framework used in cost-benefit analysis, or in multi-criteria assessment (Renda, 2017; 2019): this is due to the fact that very often, the definition of regulatory cost used in the OIXO rule can differ from the one used in ex ante RIAs. A good example in this respect is Korea’s CICO system. Other good examples are countries such as Germany and the Netherlands, where a clear decision was made to prioritize cost assessment over a more comprehensive system of benefit-cost analysis.
- Lesson 10.* OIXO rules have produced limited impact when governments have contemplated a broad set of exceptions, or adopted an excessively narrow focus. This is the case for countries like Canada (mostly due to the focus on administrative burdens); Mexico (due to the broad range of exceptions to avoid the rule); and the UK (where the National Audit

can lead to a reduction of administrative burdens. This is the case of so-called RegTech or SupTech solutions, which apply digital technology to monitoring, supervision and compliance verification in a growing number of sectors. Accordingly, direct costs from regulation must be approached in a dynamic way, rather than as a static concept.

⁴¹ John Graham. *A Future for Federal Regulatory Budgeting?* JOURNAL OF BENEFIT-COST ANALYSIS, 11(1), 55-61. doi:10.1017/bca.2019.36 (2020).

Office heavily criticized the implementation of the OI30 rule *i.a.* due to the rather arbitrary selection of costs to include in the overall budget). Perhaps the most impactful implementation of the rule to date can be found in Germany, where political commitment, methodological rigor, extreme transparency and adequate governance have made the OIOO rule a cornerstone of the government's effort to improve the quality of regulation, at the same time extending to the relationship between the federal government and the Parliament, subnational governments (the *Laender*) and even the European Union level.

IV. DOES REGULATORY BUDGETING HAVE A FUTURE? POST-PANDEMIC SCENARIOS FOR IMPROVING REGULATORY QUALITY

The adoption of regulatory budgeting rules has proven to be beneficial in a number of countries around the world, not only (and not prevalently) due to the cost reductions achieved, but rather for the impact it has had in terms of triggering greater awareness in the administration of the costs generated by regulation; as well as a greater incentive to manage the existing stock of regulation, and perform regular retrospective reviews. Burden reduction targets and OIXO rules are widely considered as useful tools to improve the relationship between government and regulated entities, as well as the overall quality of regulation. However, these tools should not be conceived as the only tools to be deployed to improve the quality of legislation: as this paper explained, the global debate on better regulation is increasingly welcoming the adoption of a variety of techniques to manage and improve the regulatory stock and flow.

The United States regulatory budgeting rule is now revoked after President Joe Biden issued an executive order, revoking EO13771 "Reducing Regulation and Controlling Regulatory Costs", as well as EO13777. With hindsight, the rule may have been designed in a way that imposed excessive deregulatory efforts, and a too significant deviation from the established practice of cost-benefit analysis in Federal agencies. Not surprisingly, and in line with similar international experience (*e.g.*, the UK), the rule introduced with EO13,771 has only partly achieved its intended goals. The international experience reviewed in this article suggests that the new administration may still find it beneficial to consider the adoption of a regulatory budgeting rule: yet, this may rather take the form of a cost-based OIOO rule (this, with $X = 1$); with no reference to the number of regulations to be repealed; implemented on the basis of systematic retrospective reviews; based on the notion of unnecessary costs; deeply nested in the regulatory review system introduced with EO12,866; attentive to the economic, social, environmental, and overall distributional consequences of the measures repealed or revised; focused on the implementation of digital solutions as options for simplification and regulatory relief; and compatible with the President's social and environmental agenda.