

Regulatory Policy and Governance in Latin America

*VIII MEETING OF IBERO-AMERICAN AND
CARIBBEAN
REGULATORY IMPROVEMENT NETWORK*

Lima, Perú


Nick Malyshev, Head, Regulatory Policy Division, OECD
Pedro Farias, Modernization of State Principal Specialist, IDB

About the project

Background and context:

- Conducted first in 2015-2016 for seven countries of the LAC region.
- Results published in the 2017 Government at a Glance: Latin America and the Caribbean.
- Conducted again in 2019 with three more countries of the LAC region.

Objectives:

- Gather up-to-date information on regulatory practices in the LAC region for a second time.
 - Provide baseline for measuring progress over time, measure progress and identify areas for potential reform.
 - Generate inputs for prioritizing and planning regulatory policy initiatives.
- 

About the project

Process and methodology:

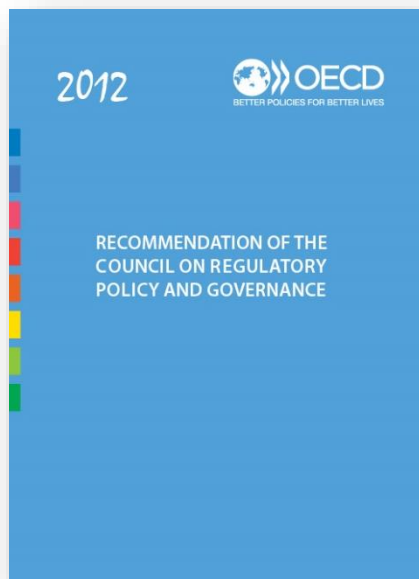
- Countries covered:
 - Argentina**
 - Brazil**
 - Colombia**
 - Chile**
 - Costa Rica**
 - Dominican Republic**
 - Ecuador**
 - El Salvador**
 - Mexico**
 - Peru**
- Data collection based on adapted OECD 2017 Regulatory Indicators Questionnaire with focus on stakeholder engagement
- Scope focuses on subordinate regulations and Executive Branch practices
- Survey and data verification carried out jointly by OECD and IDB
- Interaction with countries' focal points on the responses

What has been done and where do we stand in the data collection process?

- ✓ Responses from 10 LAC countries (including 4 OECD members and accession countries)
- ✓ Treatment of data to enable analysis
- ✓ First round of data cleaning by OECD and IDB – questionnaires sent back to countries for feedback
- ✓ Second-round of data verification process by OECD and IDB based on the feedback from countries
- ✓ Clarification of remaining issues based on feedback
- ✓ Results are preliminary and **may still change!**
- ✓ Publication foreseen for the first quarter of 2020

Survey based on a strong normative framework

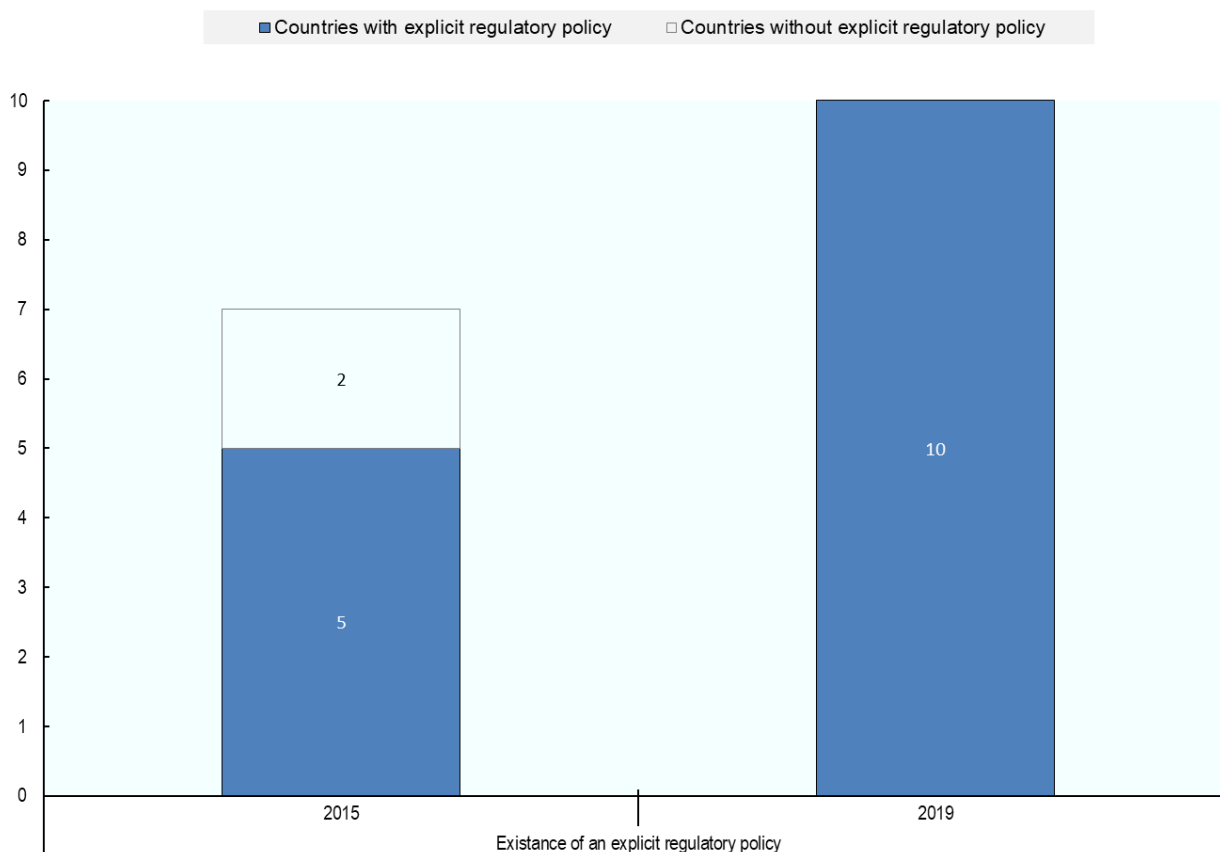
2012 OECD Recommendation on Regulatory Policy and Governance



1. Explicit whole-of-government policy for regulatory quality
2. **Principles of open government, including transparency and participation**
3. Oversight mechanisms and institutions
4. **Regulatory Impact Assessment (RIA)**
5. **Programme reviews of existing stock of regulation**
6. **Performance reports on regulatory policy**
7. Consistent policy on role and functions of regulatory agencies
8. Effective systems for review of legality and procedural fairness
9. Risk assessment, management and communication
10. Co-ordination mechanisms for multi-level regulatory coherence
11. Subnational regulatory management capacity and performance
12. International Regulatory Co-operation (IRC)

More countries have adopted regulatory policies

Whole-of-government approach to regulatory quality

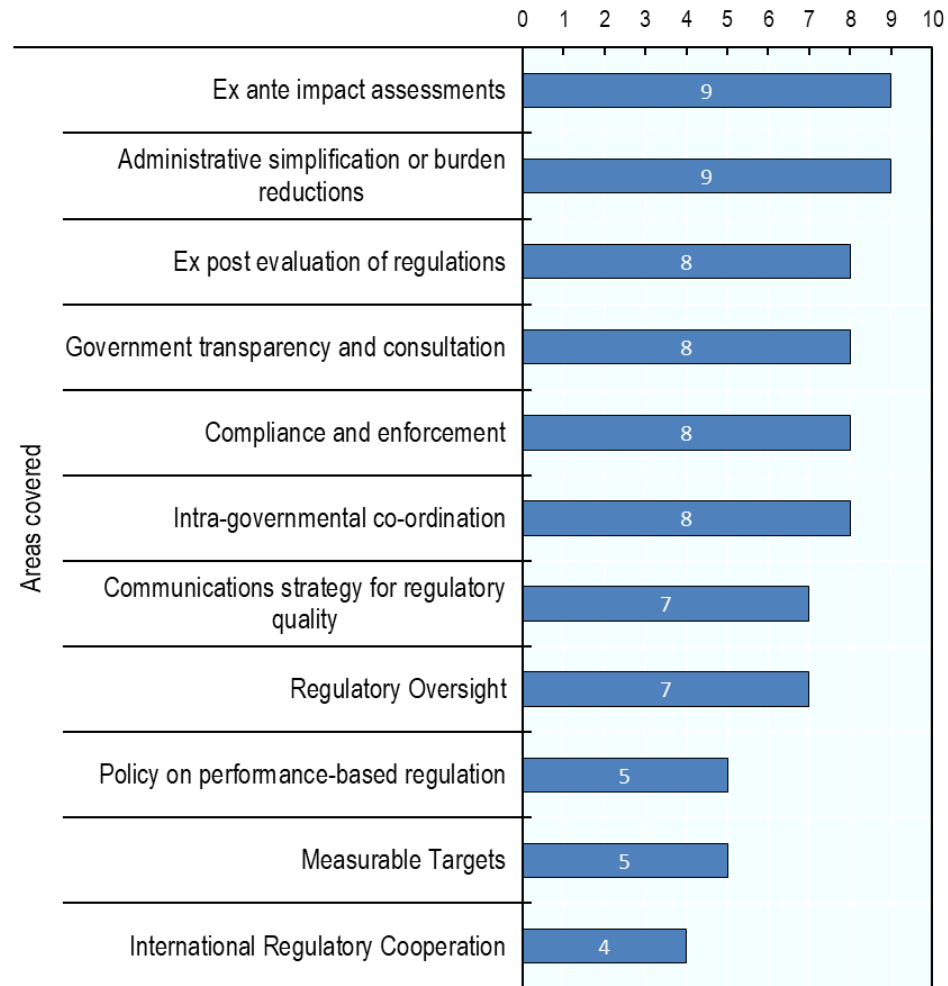


Source: Indicators of Regulatory Policy and Governance (iREG) for Latin America 2015 and 2019. <http://www.oecd.org/gov/regulatory-policy/indicators-regulatory-policy-and-governance.htm>.

Draft results

But countries still focus mainly on reducing regulatory costs

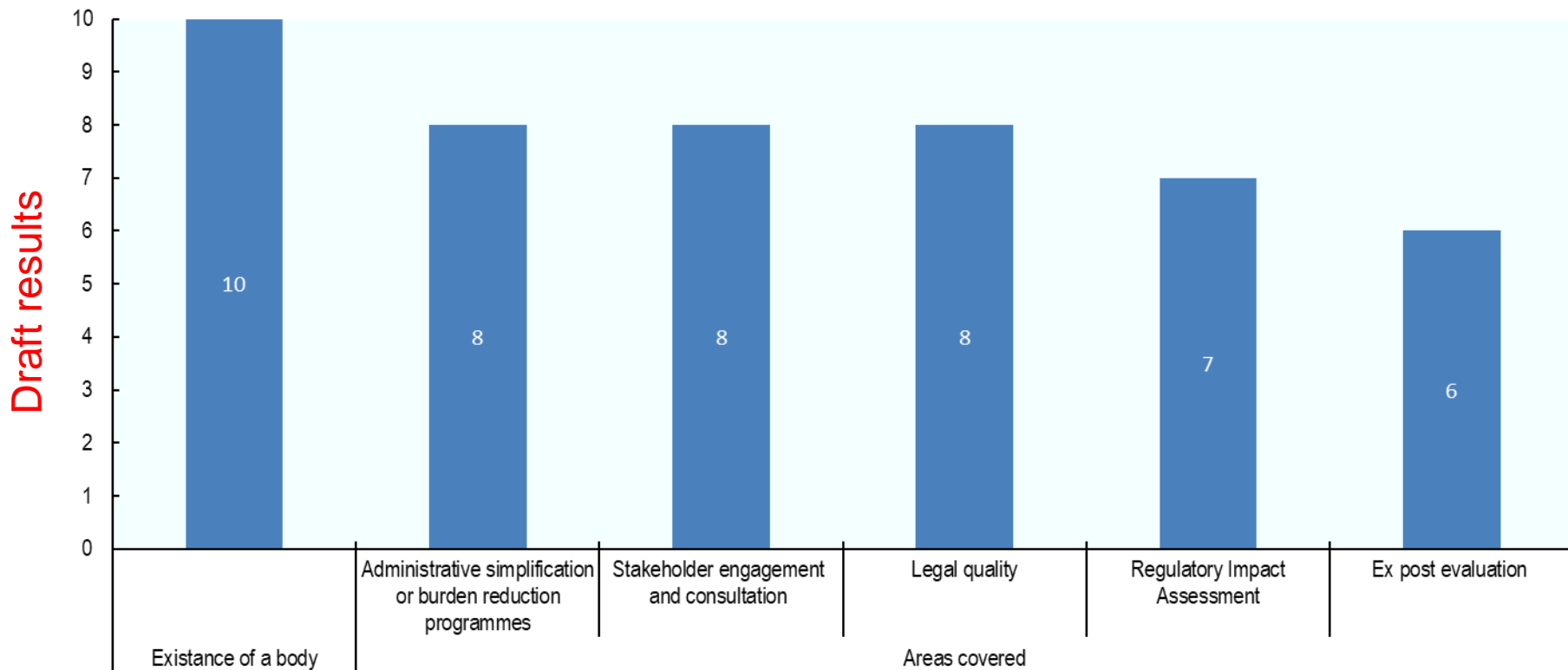
Areas covered by regulatory policies



Source: Indicators of Regulatory Policy and Governance (iREG) for Latin America 2019. <http://www.oecd.org/gov/regulatory-policy/indicators-regulatory-policy-and-governance.htm>.

Bodies to promote regulatory policy in the different areas are in place, but...

Bodies responsible for promoting regulatory policy as well as monitoring and reporting on regulatory reform

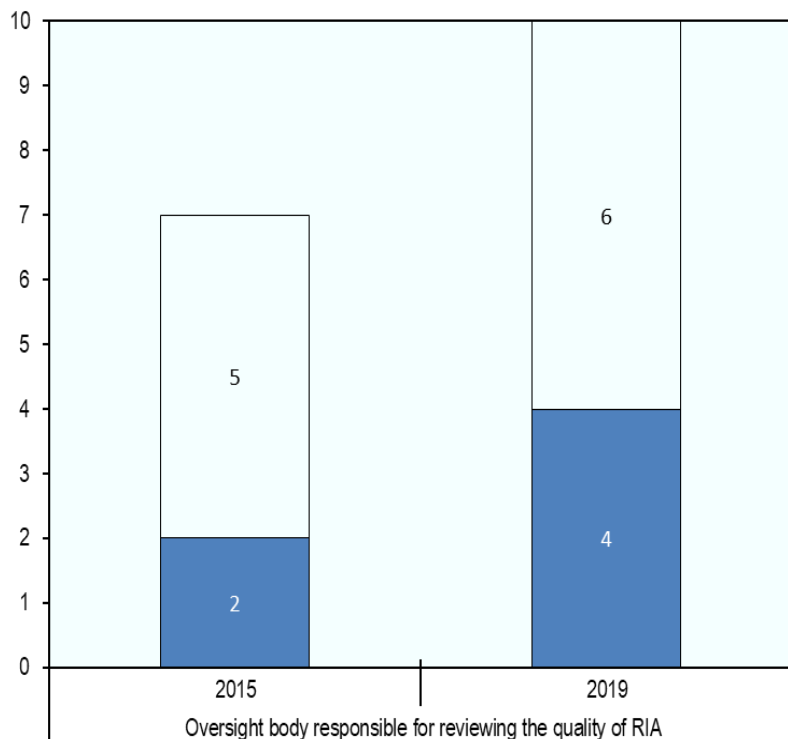


Source: Indicators of Regulatory Policy and Governance (iREG) for Latin America 2019. <http://www.oecd.org/gov/regulatory-policy/indicators-regulatory-policy-and-governance.htm>.

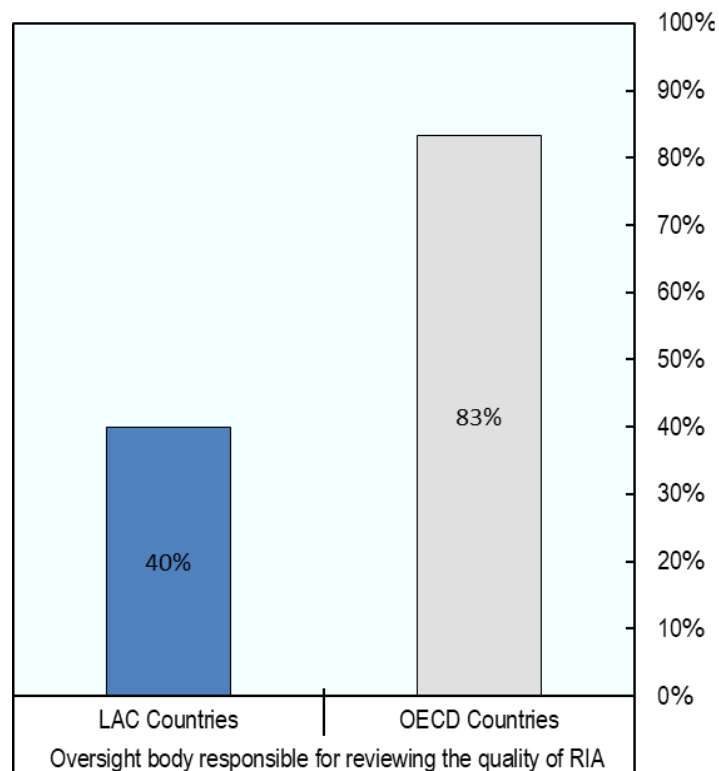
...these bodies still often lack clear oversight functions for RIA...

RIA oversight in LAC countries

■ Countries with □ Countries without



RIA oversight in LAC countries (2019) – compared to OECD countries

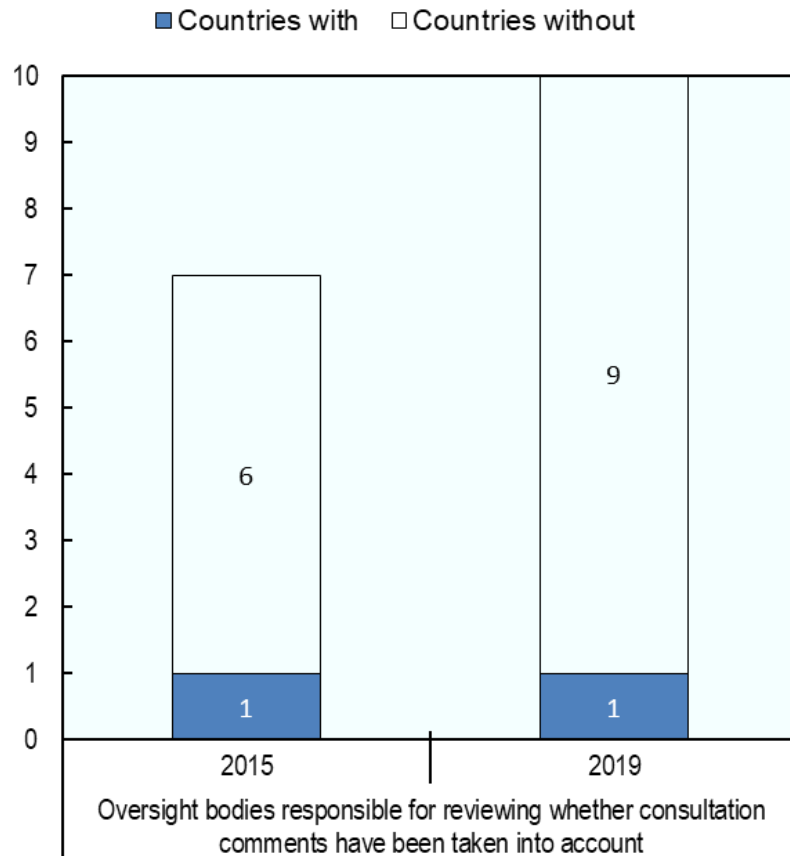


Note: Data on OECD countries cover all OECD countries and reflect the situation as of 31 December 2017

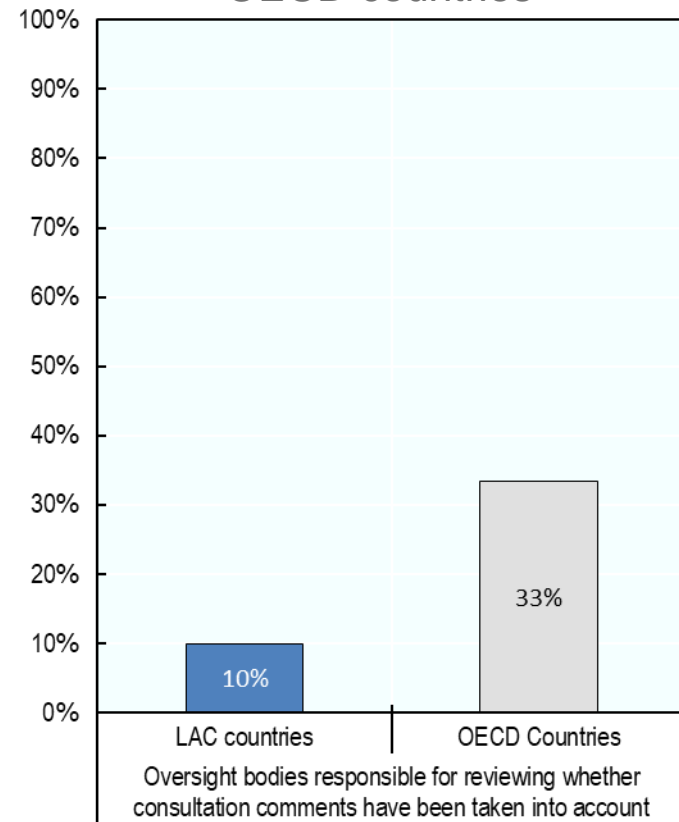
Source: Indicators of Regulatory Policy and Governance (iREG) for Latin America 2019 and Indicators of Regulatory Policy and Governance (iREG) Surveys 2017. <http://www.oecd.org/gov/regulatory-policy/indicators-regulatory-policy-and-governance.htm>

...as well as oversight functions for their stakeholder engagement processes.

Oversight of stakeholder engagement in LAC countries



Oversight of stakeholder engagement in LAC countries (2019) - compared to OECD countries



Note: Data on OECD countries cover all OECD countries and reflect the situation as of 31 December 2017

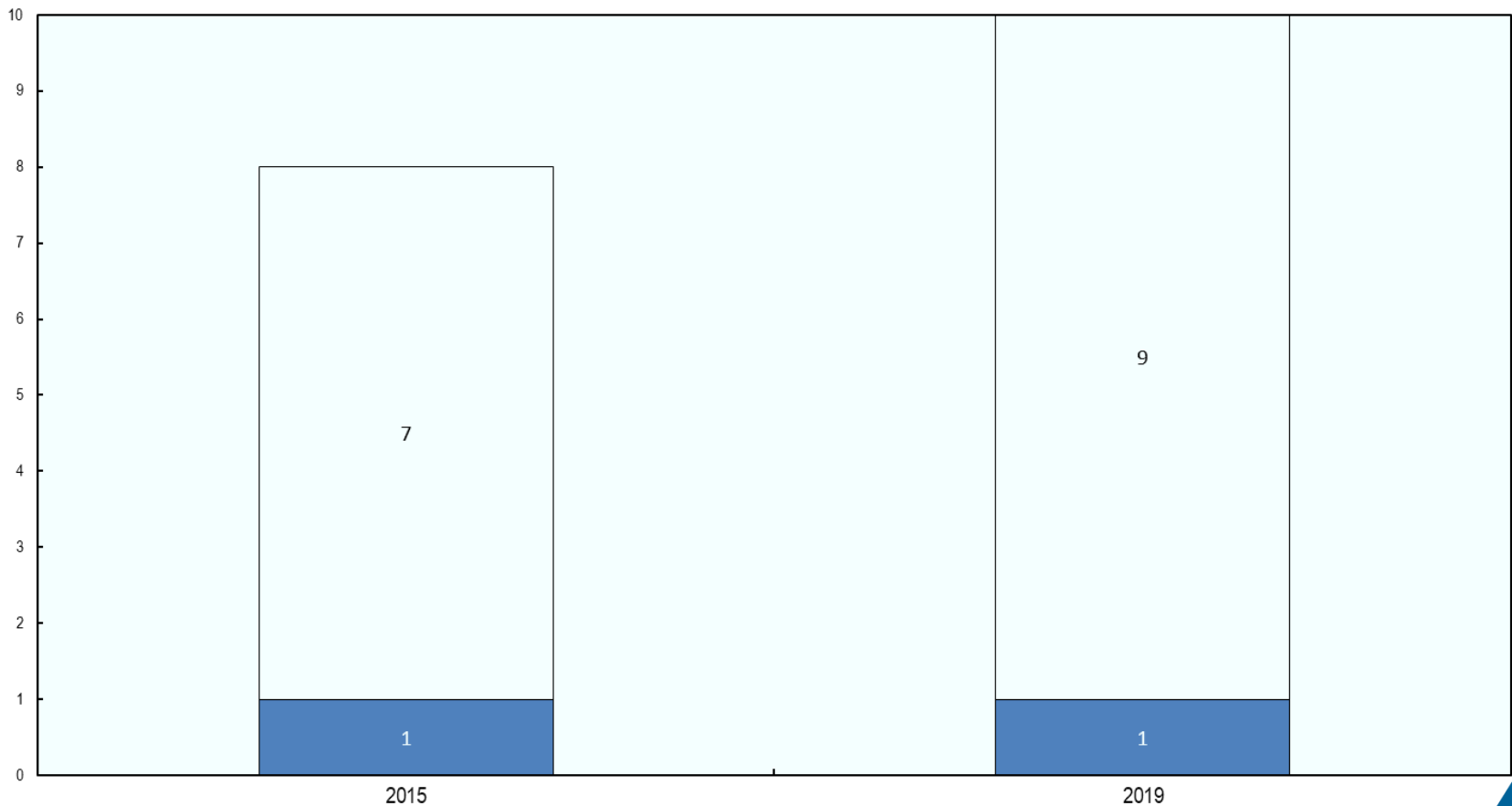
Source: Indicators of Regulatory Policy and Governance (iREG) for Latin America 2019 and Indicators of Regulatory Policy and Governance (iREG) Surveys 2017. <http://www.oecd.org/gov/regulatory-policy/indicators-regulatory-policy-and-governance.htm>

Regulatory Forward Planning: LAC is still far from good practices

Does the government publish online a list of subordinate regulations to be prepared, modified, reformed or repealed in the next six months or more?

■ Yes, there is an on-line publication □ No, there is not an on-line publication

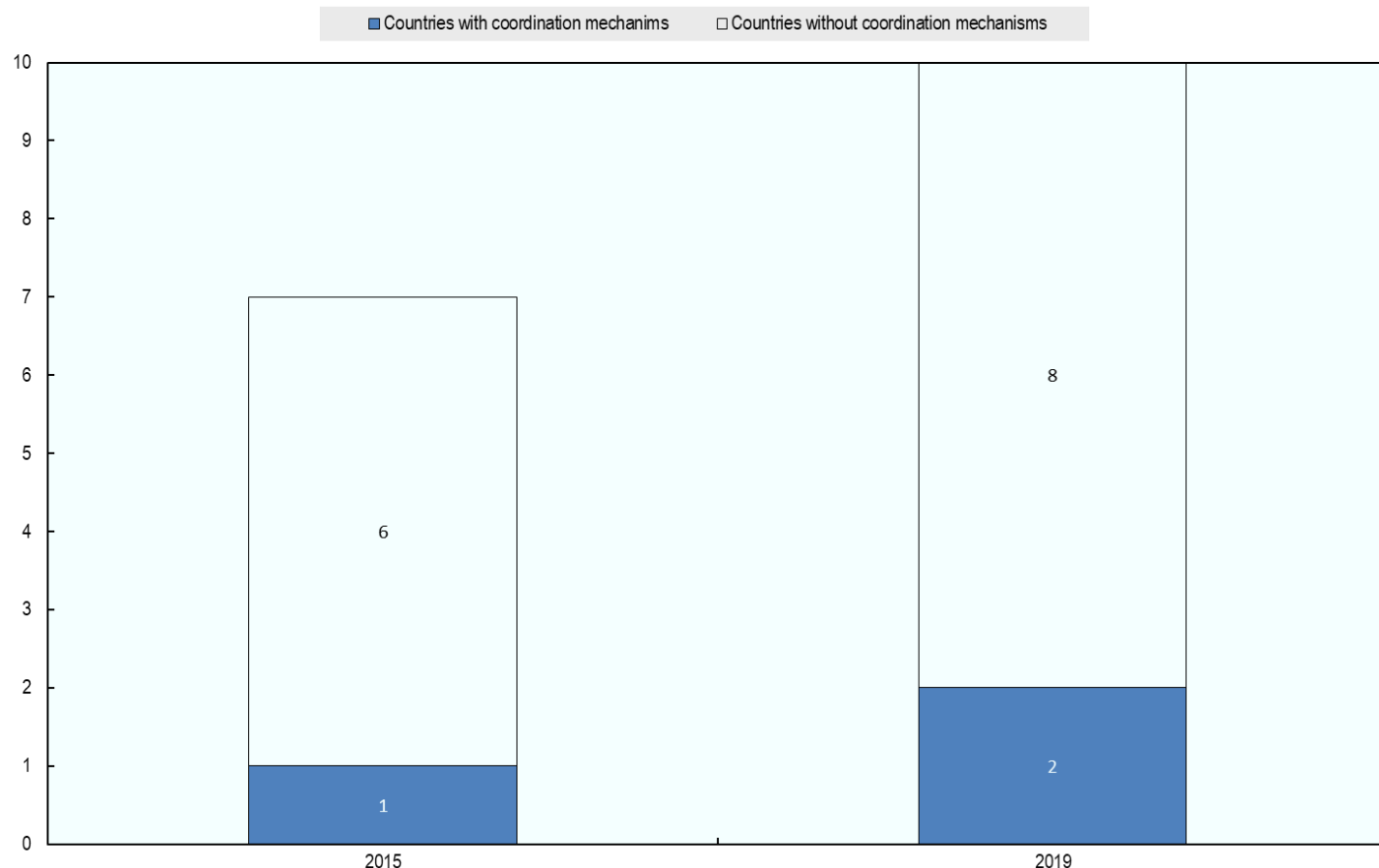
Draft results



Source: Indicators of Regulatory Policy and Governance (iREG) for Latin America 2019. <http://www.oecd.org/gov/regulatory-policy/indicators-regulatory-policy-and-governance.htm>.

Regulatory Multi-level Coordination: reform still needs to be embedded in all levels of government in the region

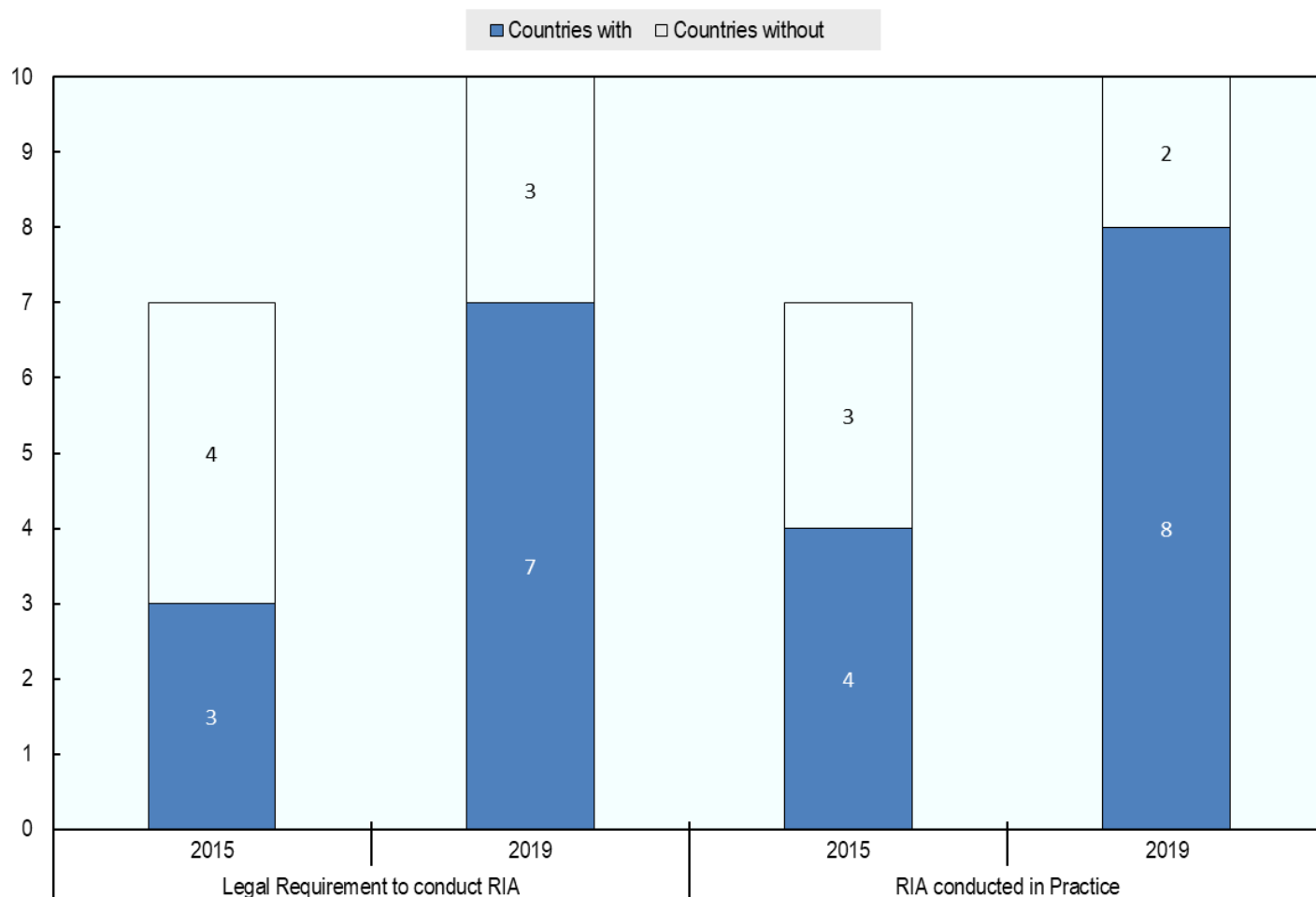
Do countries have a standing co-ordination mechanism across national and sub-national governments to promote regulatory coherence in regulatory approaches?



Source: Indicators of Regulatory Policy and Governance (iREG) for Latin America 2015 and 2019. <http://www.oecd.org/gov/regulatory-policy/indicators-regulatory-policy-and-governance.htm>.

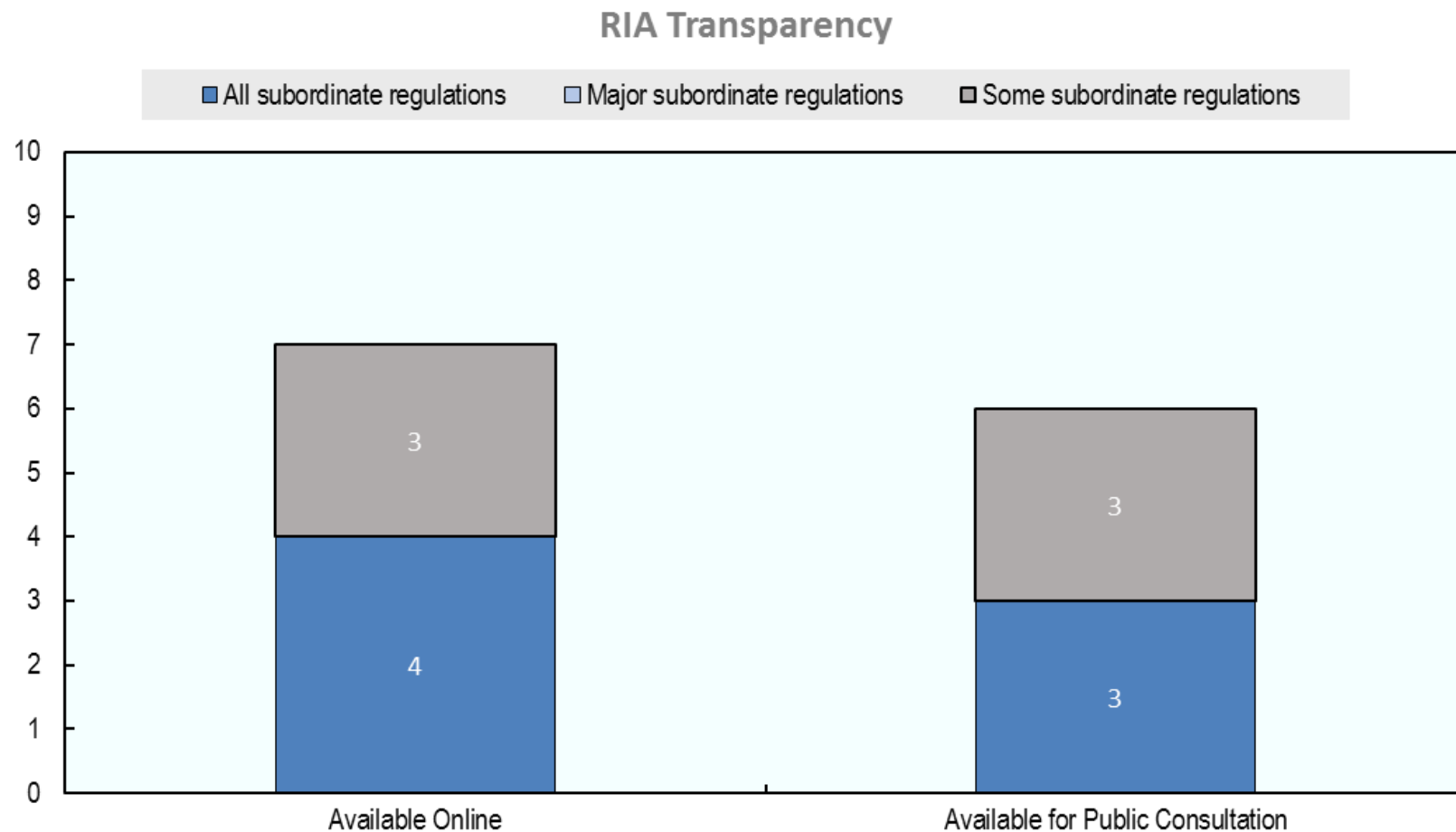
RIA is increasingly required and used to inform the development of some regulations

RIA: Legal Requirement and Practice



Source: Indicators of Regulatory Policy and Governance (iREG) for Latin America 2015 and 2019. <http://www.oecd.org/gov/regulatory-policy/indicators-regulatory-policy-and-governance.htm>.

However, it is only transparent in some countries and for some regulations

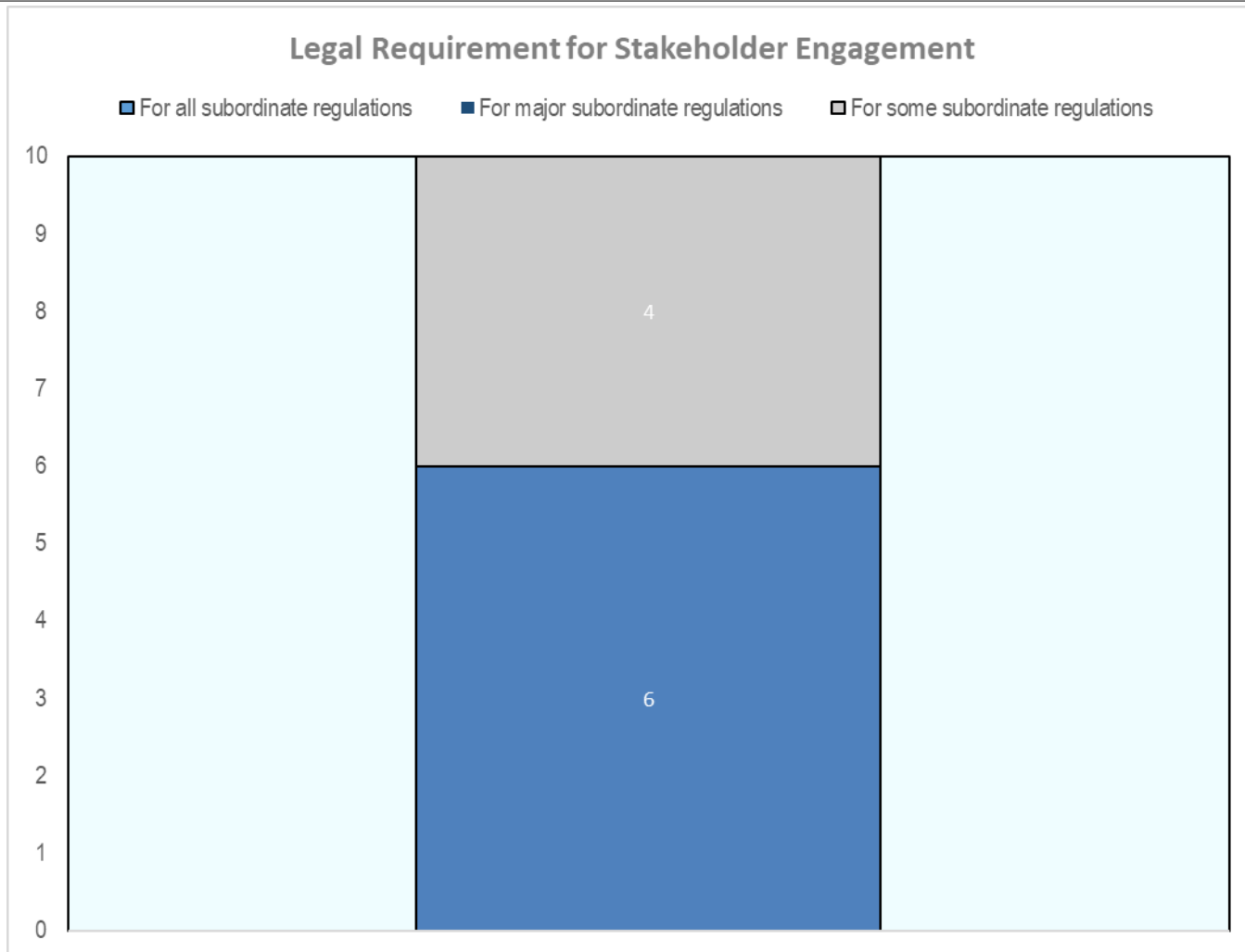


Source: Indicators of Regulatory Policy and Governance (iREG) for Latin America 2019. <http://www.oecd.org/gov/regulatory-policy/indicators-regulatory-policy-and-governance.htm>.

Draft results

All LAC countries have a legal requirement for stakeholder engagement. However,...

Draft results



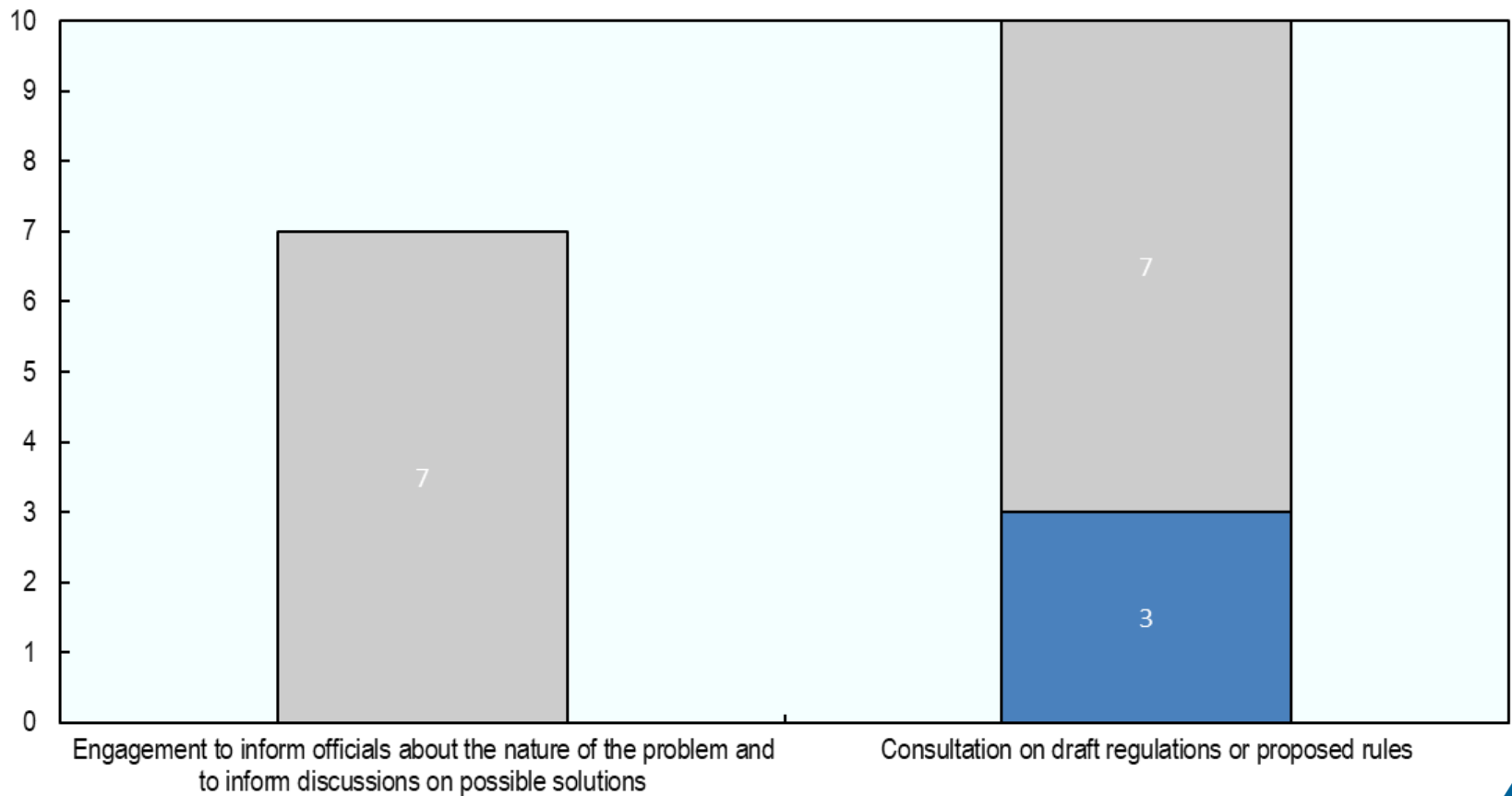
Source: Indicators of Regulatory Policy and Governance (iREG) for Latin America 2019. <http://www.oecd.org/gov/regulatory-policy/indicators-regulatory-policy-and-governance.htm>.

...stakeholders are usually engaged only for some regulations, especially at the late stage of rule-making

Stakeholder Engagement at Different Stages

■ For all regulations □ For major regulations □ For some regulations

Draft results

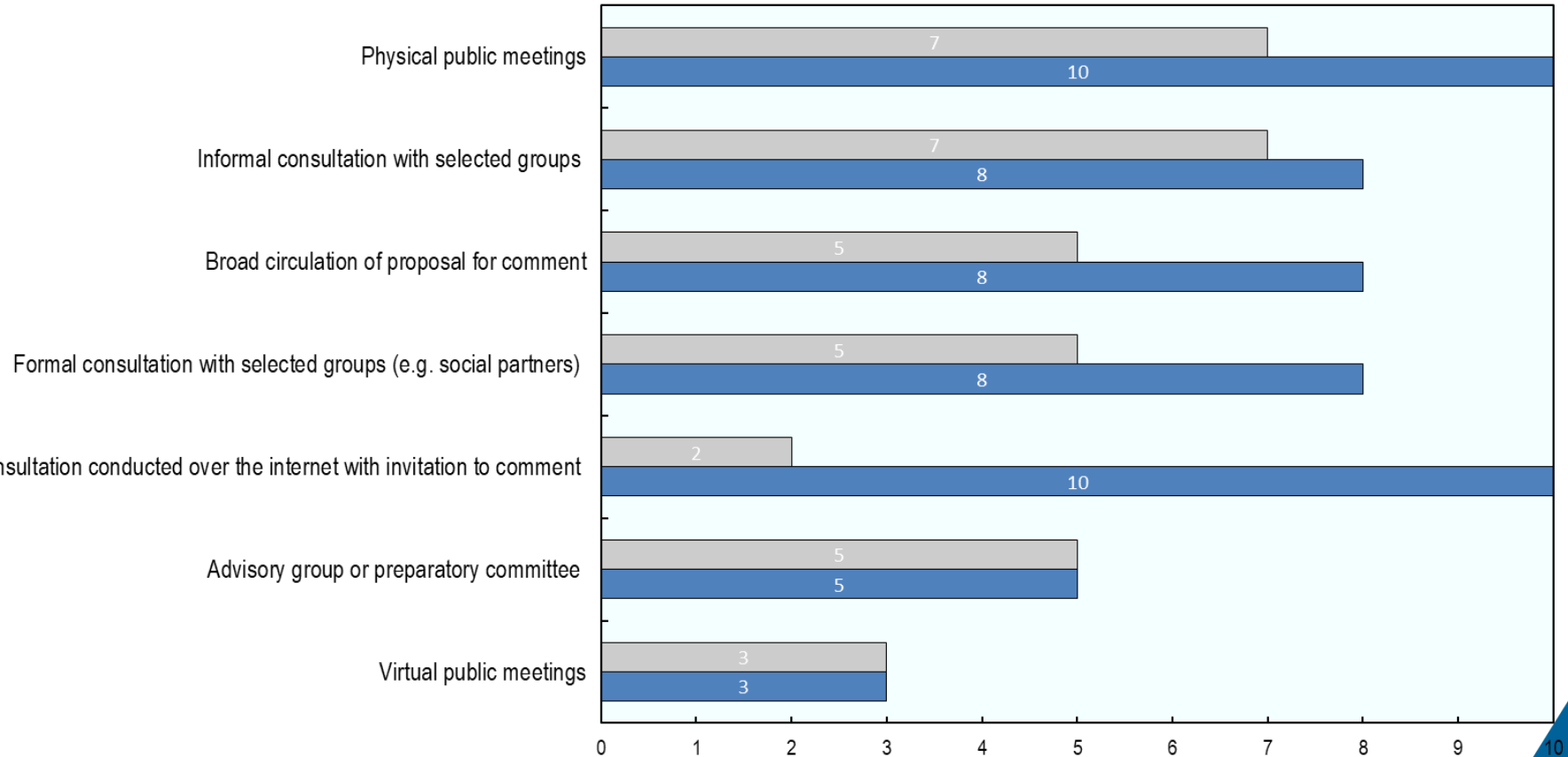


When stakeholders are engaged, it is often in public meetings and over the internet

Forms of Stakeholder Engagement

□ Early Stage ■ Late Stage

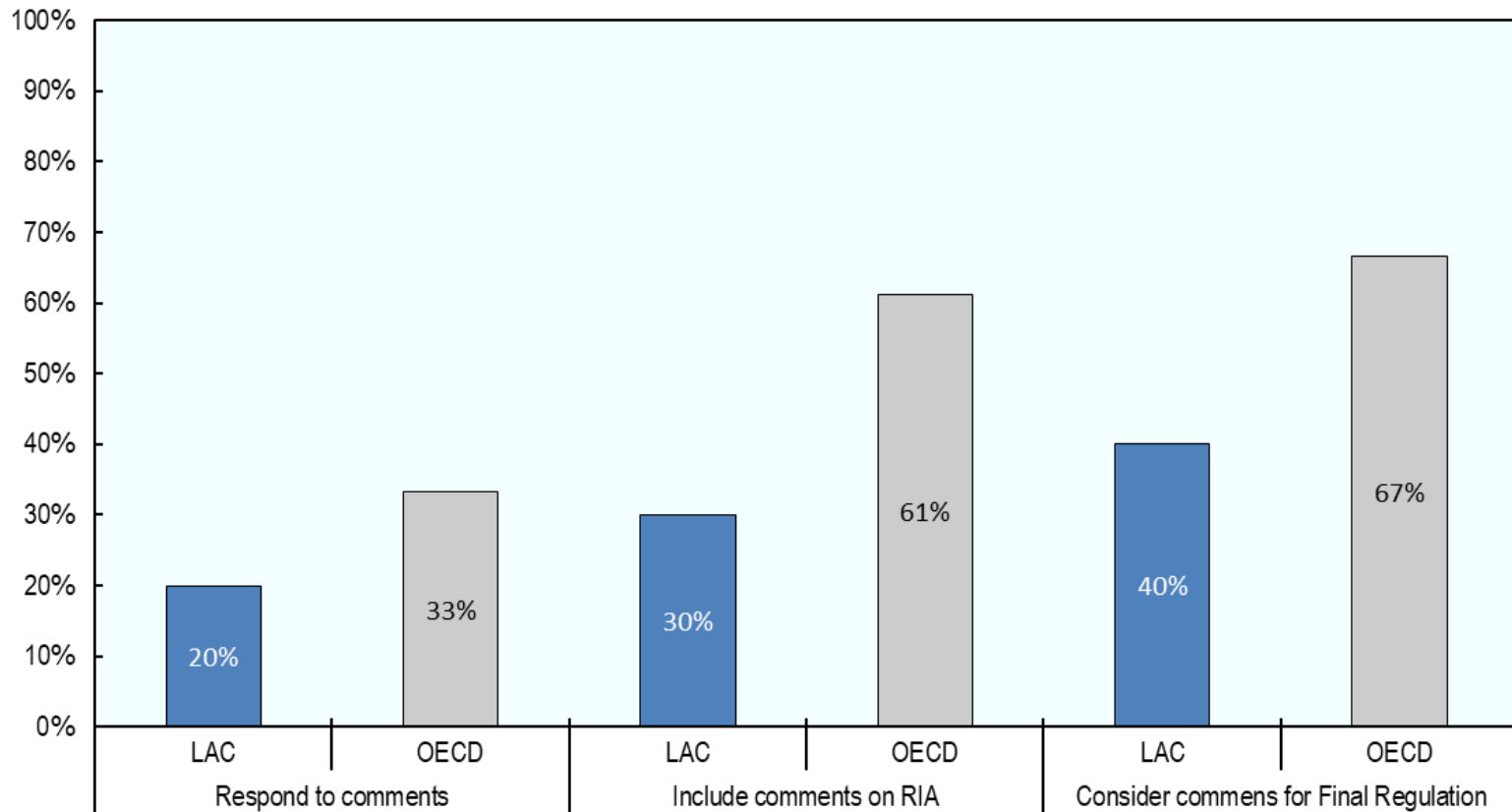
Draft results



Source: Indicators of Regulatory Policy and Governance (iREG) for Latin America 2019. <http://www.oecd.org/gov/regulatory-policy/indicators-regulatory-policy-and-governance.htm>.

After stakeholders are engaged, only a few regulators have the obligation to respond to or to consider the comments received

Obligations of regulators to consider comments

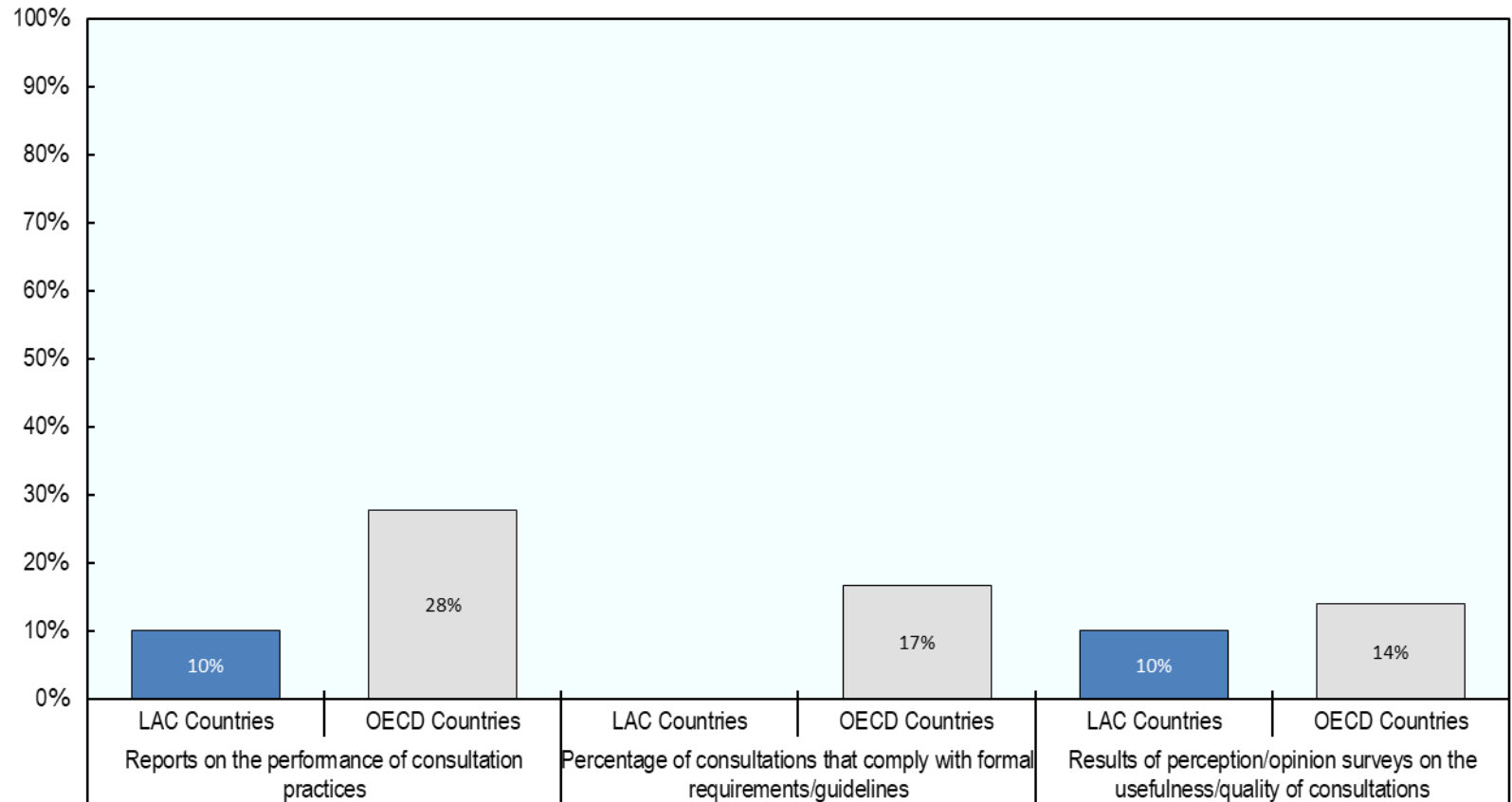


Note: Data on OECD countries cover all OECD countries and reflect the situation as of 31 December 2017

Source: Indicators of Regulatory Policy and Governance (iREG) for Latin America 2019 and Indicators of Regulatory Policy and Governance (iREG) Surveys 2017. <http://www.oecd.org/gov/regulatory-policy/indicators-regulatory-policy-and-governance.htm>

LAC countries are not yet evaluating the performance of their stakeholder engagement processes

Performance reports/indicators published



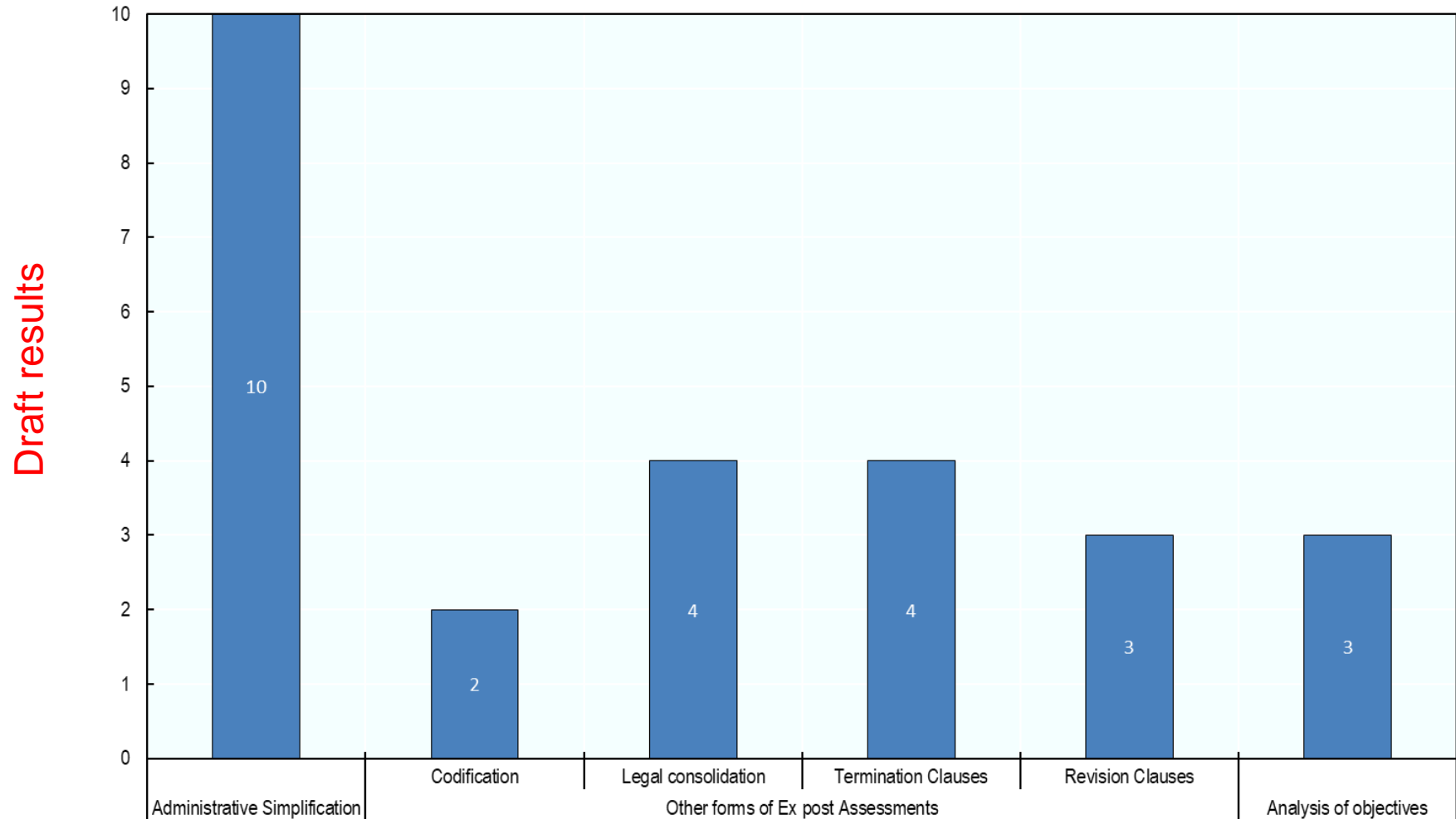
Note: Data on OECD countries cover all OECD countries and reflect the situation as of 31 December 2017

Source: Indicators of Regulatory Policy and Governance (iREG) for Latin America 2019 and Indicators of Regulatory Policy and Governance (iREG) Surveys 2017. <http://www.oecd.org/gov/regulatory-policy/indicators-regulatory-policy-and-governance.htm>

Draft results

Ex post evaluation focuses on administrative simplification. It is rarely used to support the achievement of regulatory objectives

Forms of Ex post Assessment

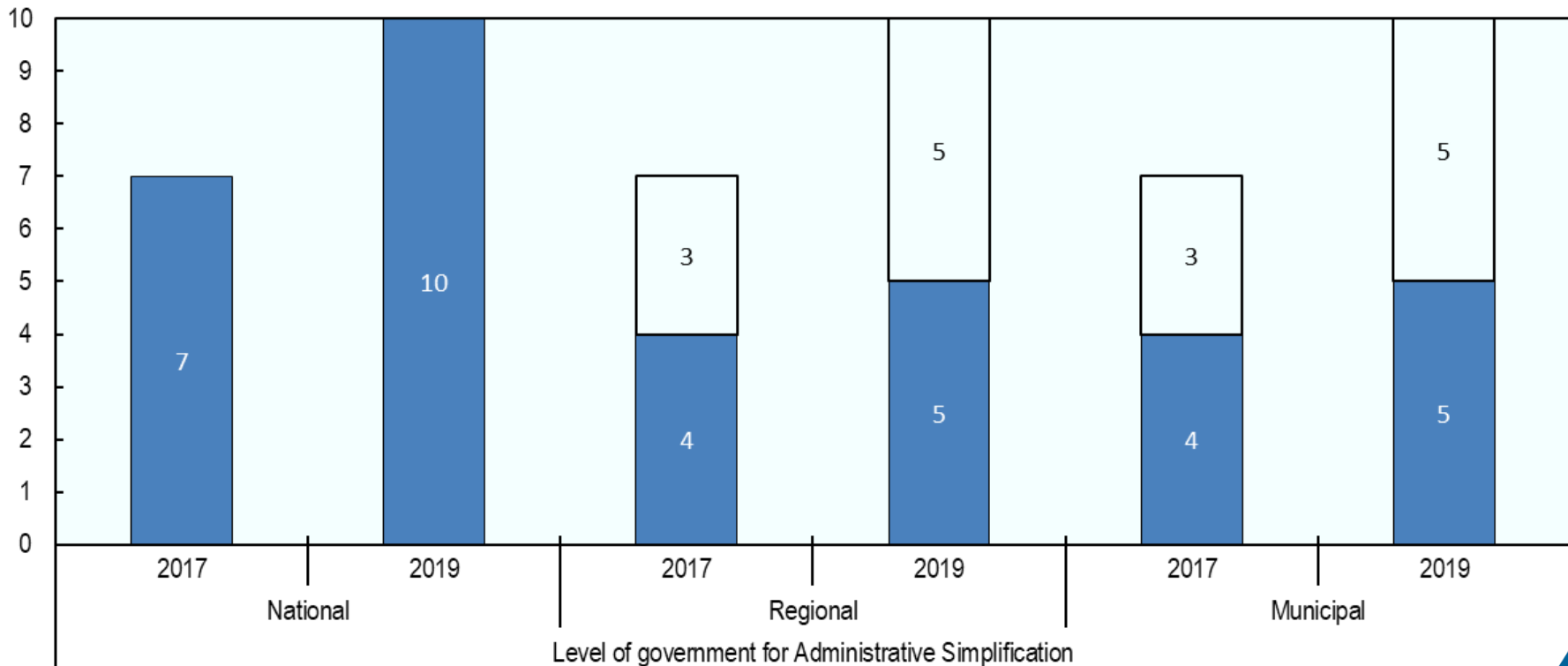


Source: Indicators of Regulatory Policy and Governance (iREG) for Latin America 2019. <http://www.oecd.org/gov/regulatory-policy/indicators-regulatory-policy-and-governance.htm>.

Administrative Simplification process is still mainly focused at central government level

At what level of government have administrative simplification processes been conducted?

■ Yes □ No



Source: Indicators of Regulatory Policy and Governance (iREG) for Latin America 2019. <http://www.oecd.org/gov/regulatory-policy/indicators-regulatory-policy-and-governance.htm>.

Key trends and preliminary conclusions

- LAC Countries are increasingly aware of the importance of having regulatory policies. Many countries have reformed their regulatory policy legal framework in the last few years.
- Although bodies to promote regulatory quality exist, many countries still **lack effective oversight mechanisms** to review the quality and ensure the use of regulatory management tools.
- Approaches are still **focused on the reduction of regulatory costs** in most countries.
- **Countries are increasingly adopting RIA** to inform the development of their regulations.
- All countries have a legal requirement to conduct stakeholder engagement, but still **do not consult systematically in practice**. There is space for greater involvement of stakeholders in particular in the early stages of the process.
- Countries **use ICT mainly to consult the public on draft regulations** at a later stage of the policy development.
- Countries are still **focusing *ex post* assessments on administrative simplification**.

Looking forward...

- » Countries should invest in **more holistic approaches** to regulatory quality (beyond regulatory costs)
- » Regulatory governance should support **multi-level coordination and incentives** for programs at subnational level
- » Effective **oversight and capacity building remain key** to ensure consistent implementation of regulatory instruments, particularly RIA
- » Promote stakeholder engagement to improve **quality and legitimacy** of regulations
- » Consider **ex post evaluations** as a form to ensure that regulations achieve their objectives

OECD and IDB Contacts:

Pedro Farias – pfarias@iadb.org

Manuel Gerardo Flores - manuelgerardo.floresromero@oecd.org

Benjamin Gerloff – benjamin.gerloff@oecd.org

Renny Reyes - renny.reyes@oecd.org

Gustavo Zanabria - gustavoza@iadb.org

Lima, Perú
October, 2019