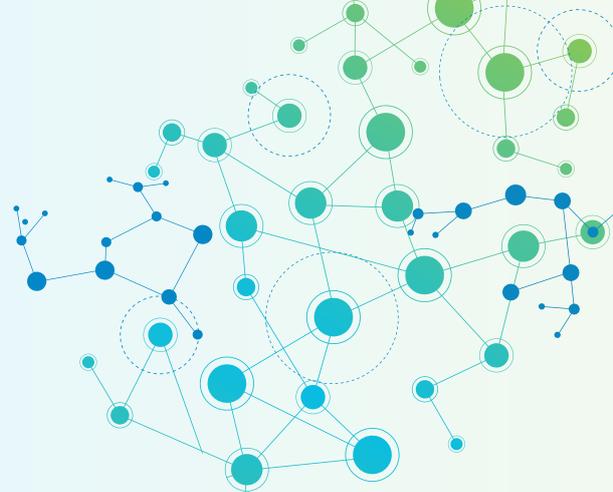


International Regulatory Co-operation



Adapting rulemaking for an interconnected world

Policy Brief, October 2018

OECD Regulatory Policy Division



Laws and regulations are pervasive to all areas of life for businesses and citizens. They are an essential part of the policy making at national level. Yet, laws and regulations often have only domestic reach, while many of today's most pressing policy challenges transcend national borders. This mismatch jeopardises the ability of states to fully achieve their public policy objectives and to ensure the well-being of their citizens.

This policy brief:

- 1) outlines the main reasons for cooperating on laws and regulations;
- 2) identifies how domestic regulators can cooperate; and
- 3) considers how international rule-makers can improve their activity.

1. The main reasons for co-operating on laws and regulations

REGULATING FOR THE WELL-BEING OF CITIZENS IN AN INTERCONNECTED WORLD

The world has become increasingly interconnected...

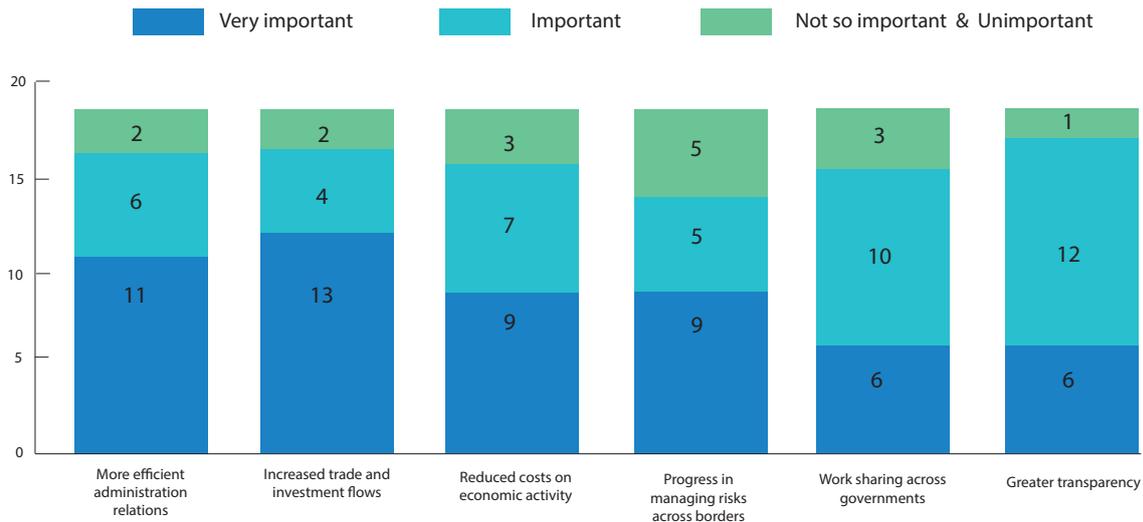
Over the past decades, the interconnectedness of countries and the integration of the world economy have increased drastically, in part due to the many technical revolutions of the last 30 years. The rapid flow of goods, services, people and finance across borders is testing the effectiveness and the capacity of domestic regulatory frameworks. As a result, the global landscape in which policy makers and regulators operate has shifted dramatically. New opportunities and changes brought by globalisation and an increasingly interconnected world present contemporary policy makers and regulators with challenges that cannot be dealt with in isolation.

- **Goods and services are now bought from all over the world.** Global trade intensity doubled between 1990 and 2015. Today, products cross many borders before being finally purchased in a given country.
- **People no longer live in the same place their whole life.** In 2015, 13% of the total population living in OECD countries was foreign-born, compared to 9.5% in 2000.
- **World travel has become a lot easier** with passenger air traffic expected to grow by 3% to 6% annually over the next 15 years.
- **We interact internationally through digital platforms.** Social media viewing trends show that users increasingly access content outside their own country. Internet is enabling significant cross-border financial transfers on a daily basis.

...acting in isolation is not an option anymore

Responding to climate change, tackling tax evasion and avoidance, managing pandemics, and strengthening financial market stability are all complex and multidimensional issues of an intrinsically transnational nature. The ability of countries to effectively deal with global challenges solely through domestic regulation is limited. Co-ordination is needed to tackle these challenges and achieve a coherent and effective regulatory response. Beyond this critical aspect, examples from the trade area show that greater coherence of regulations can lower time and costs for firms and citizens having to comply with multiple regulatory requirements. Co-operation is also likely to bring substantial gains to regulators, who are able to pool knowledge and resources through cooperating with their peers across borders. Yet international co-operation remains, to a large extent, under-valued by governments.

Number of countries valuing a particular benefit of IRC



Source: International Regulatory Co-operation: Addressing Global Challenges, OECD (2013)

IRC ALLOWS COUNTRIES TO TACKLE REGULATORY CHALLENGES AT THE RIGHT LEVEL OF GOVERNANCE.

In many areas, non-cooperation can alter the effects of regulations. Typically, individual states are unable to effectively curtail the risks of climate change, pandemics or tackle international tax evasion. For example, they cannot fight the pollution of transboundary water bodies or manage migration flows on their own. A failure to address such challenges can be extremely costly for states, societies and citizens.

There are striking examples of how joint approaches and rules can lead to tangible impacts in various key sectors.

- **The eradication of smallpox could not have been achieved without collective action led by the WHO.** The smallpox vaccine was developed in the 19th century but it was only in 1980, after 20 years of joint global action, that the disease was declared eradicated.
- **The Ozone layer preserved due to international agreement between 46 countries.** The Montreal Protocol on Substances that Deplete the Ozone Layer led to the reduction of over 97% of all global consumption of controlled ozone depleting substances.
- **Tax evasion has become increasingly difficult thanks to close co-operation between authorities.** The OECD Global Forum on Transparency and Exchange of Information for Tax Purposes has changed the paradigm for transparency in tax matters, by introducing automatic exchange of information between tax administrations.

REGULATORY DIVERGENCE IMPOSES HIGH AND OFTEN UNNECESSARY COSTS ON BUSINESSES AND CONSUMERS.

Regulating without consideration for the international context is likely to result in unnecessary regulatory divergences across countries. These may be costly to businesses, citizens and governments. Producers and traders may face significant costs to identify the relevant regulatory requirements, adapt their production processes to comply with them, and prove conformity in order to sell them abroad.

The trade costs of regulatory heterogeneity

While different sectors and countries may experience a variety of costs, ultimately, three main categories of heterogeneity-related and behind-the-border trade costs can be distinguished:

Information costs are the costs of obtaining and processing information on regulatory processes. The more opaque and complex the system, the higher the costs.

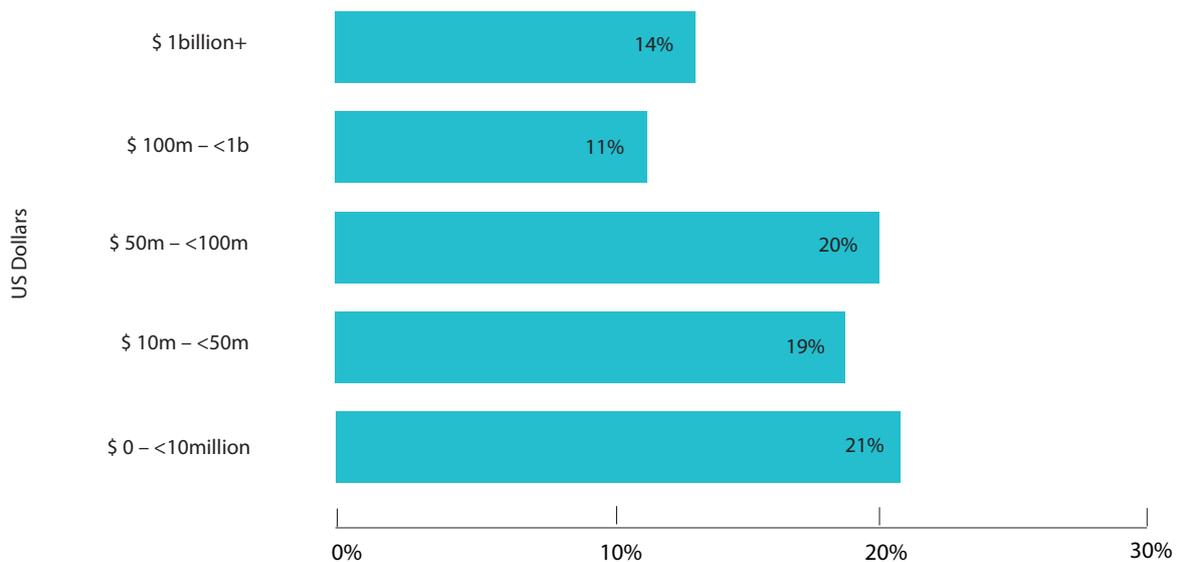
Specification costs are the costs of adjusting products and services to different requirements. They may include extra labour and input costs and the induced costs of reduced economies of scale.

Conformity assessment costs are the costs of demonstrating compliance with requirements. They may include costs of additional lab testing, certificates, inspections, audits.

Other costs involve the costs of customs procedures (at the border) and the costs to regulators and inspectors.

The costs of regulatory divergence for smaller and larger financial institutions

In the financial sector, regulatory divergences are estimated to cost financial institutions 5-10% of their annual global turnover (some USD \$780 billion per year), with the financial performance of smaller firms the hardest hit.



Source: Regulatory Divergence: Costs, Impacts, IFAC and BIAC (2018)

IRC IS AN EFFICIENT ADMINISTRATIVE STRATEGY: IT IMPROVES THE CAPACITIES OF DOMESTIC REGULATORS THROUGH PEER LEARNING AND SHARING OF RESOURCES.

Good regulation is expensive. It requires significant expertise, resources to gather the relevant evidence and a functioning regulatory infrastructure for rule development and implementation. It is increasingly difficult for countries and regulators to afford the expertise needed to deliver good regulation to citizens. Yet, the complexity of the current regulatory challenges calls for effective and efficient regulatory regimes. Co-operation among regulators from different jurisdictions allows them to share their experience, expertise and resources in a specific domain, reducing the overall costs of good regulation.

The **OECD Mutual Acceptance of Data** system helps governments and industry save some €153 million per year through reduced chemical testing and the harmonisation of chemical safety tools and policies across jurisdictions. In addition, the co-operation has brought less quantifiable benefits, such as the health and the environmental gains from governments being able to evaluate and manage more chemicals than they would if working independently; the avoidance of delays in marketing new products; the pooling of know how to develop new and more effective methods for assessing chemicals.

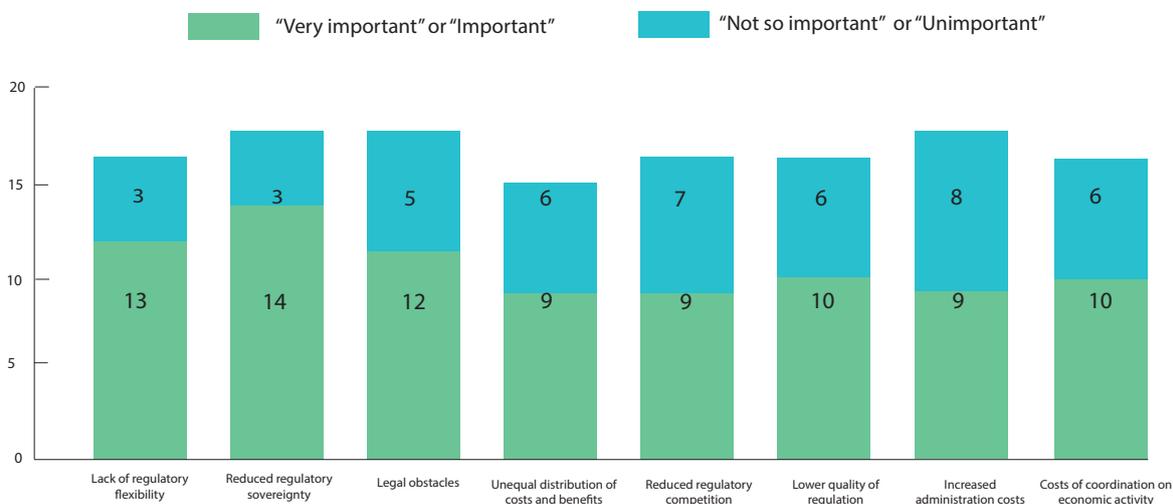
Source: OECD (2013), "Chemical safety", in International Regulatory Co-operation: Case Studies, Vol. 1: Chemicals, Consumer Products, Tax and Competition, OECD Publishing.

BUT IRC ALSO HAS ITS CHALLENGES

Despite the benefits that can be expected, IRC remains uneven and non-systematic. Beyond the legitimate concerns of countries that regulatory co-operation may generate costs that outweigh the benefits, the political economy of achieving IRC is seen as complex and the enforcement and implementation of co-operative agreements raise significant challenges.

Number of countries considering a particular challenge as important or not

The OECD has captured countries' perception of the challenges associated with IRC through the following question: "Based on your past experiences of regulatory co-operation, please indicate the importance of the following potential concerns raised by engaging in international regulatory co-operation".



Source: International Regulatory Co-operation: Addressing Global Challenges, OECD (2013)

2. The national context

HOW CAN REGULATORS EMBRACE GLOBALISATION TO ACHIEVE THEIR POLICY OBJECTIVES?

Regulatory co-operation has become an integral part of regulatory quality at domestic level

The **OECD Recommendation on Regulatory Policy and Governance** (2012) sets out the measures that Governments can take to deliver laws and regulations that meet public policy objectives and have a positive impact on the economy and society. Adopted in the aftermaths of the financial and fiscal crisis, of deep social changes and mounting environmental challenges, the Recommendation recognises the importance of international regulatory co-operation and makes it a full principle of regulatory quality.

Principle 12: In developing regulatory measures, give consideration to all relevant international standards and frameworks for co-operation in the same field and, where appropriate, their likely effects on parties outside the jurisdiction.

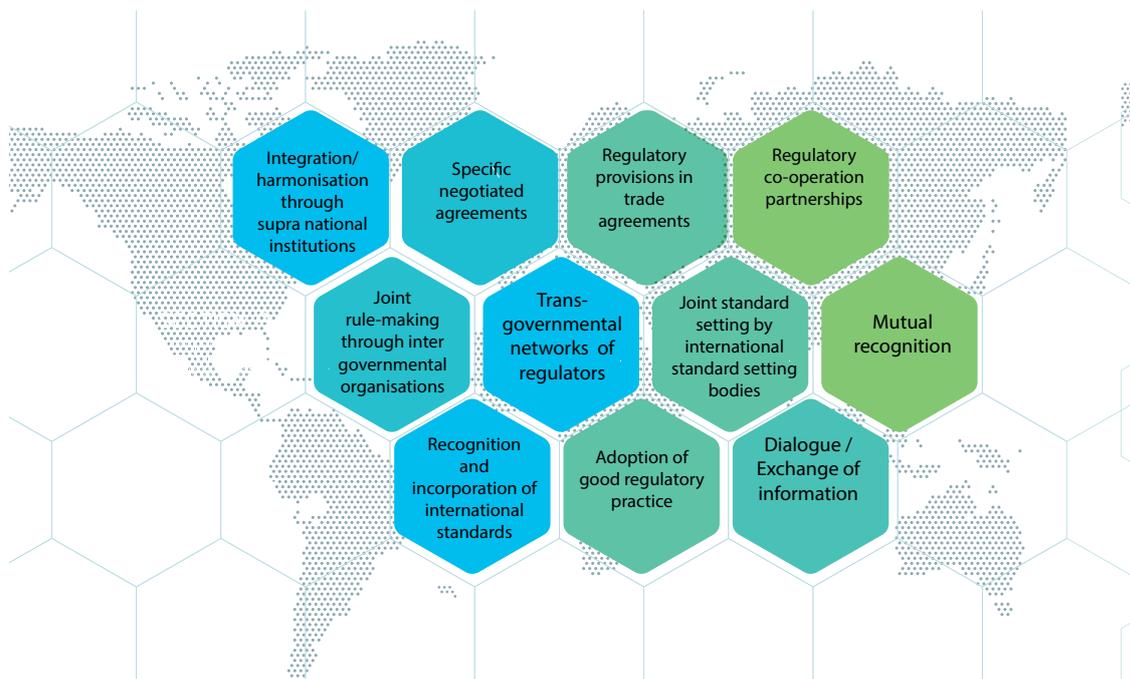
In support of the Recommendation and to map existing IRC practices, the OECD released in 2013 the first systematic and synthetic stocktaking of knowledge and evidence on the various IRC mechanisms available to governments and regulators: **International Regulatory Co-operation: Addressing Global Challenges**.

The report builds on 9 case studies in the areas of chemical safety, consumer product safety, tax, competition, water, prudential regulation, energy and risk assessment; and a study of the Canada-US Regulatory Cooperation Council. In each area, the OECD examined prominent IRC arrangements and analysed the IRC opportunities, benefits and pitfalls and showcased practical experiences relatable to regulators.

REGULATORS CAN TAP INTO A WIDE VARIETY OF IRC MECHANISMS.

IRC is often equated with regulatory harmonisation i.e. the complete alignment of regulation across countries. This view on IRC is however incomplete. Policy makers can draw from a wide range of approaches, from unilateral action to multilateral co-operation, from informal dialogues among regulators to supranational rule-making in international organisations.

The OECD typology of IRC mechanisms



Source: *International Regulatory Co-operation, Addressing Global Challenges*, OECD (2013)

HARMONISATION IS THE ULTIMATE AND MOST AMBITIOUS FORM OF IRC BUT IT IS NOT THE ONLY PATH.

Regulatory harmonisation is the ultimate IRC approach to boost the effectiveness of regulation dealing with transnational market failures and to dismantle trade barriers to regulatory divergence. However, despite the rapid increase in global economic integration, “supra-nationalism” remains the exception. This reflects the fact that full regulatory harmonisation may be too costly and a disproportionate approach to addressing certain challenges.

The **European Union** stands out as an emblematic example of harmonisation for the breadth and depth of its regulatory and economic integration. Under the Treaty on the Functioning of the European Union, member States have ceded part of their sovereignty and empowered the EU institutions to adopt laws. These laws (regulations, directives and decisions) take precedence over national law and are binding on national authorities. However, regulatory harmonisation focuses on essential requirements. In other areas, the co-operation largely takes the form of mutual recognition agreements.

Instead, regulators can tap into a wide variety of IRC mechanisms which serve different purposes, generate different benefits and costs and are more or less relevant depending on sector and country context, such as:

- **Unilaterally**, countries can foster the adoption and implementation of good regulatory practices, such as regulatory impact assessment, international standards, stakeholder engagement and *ex-post* evaluation in the development and revision of laws of regulations.
- **Bilaterally and regionally**, countries can cooperate through mutual recognition approaches, agreements across regulators to seek common grounds in specific sectors and high level platforms and commitments to regulatory co-operation.
- **To build collective action**, countries can participate in a variety of international fora that allow for exchange of information and practices and provide for consensual mutual regulatory approaches and tools.

GOOD REGULATORY PRACTICES ARE A USEFUL BASIS FOR LAYING THE GROUND FOR REGULATORY COHERENCE.

Good Regulatory Practices (GRPs) may allow regulators to mainstream international considerations in domestic rule-making. As regulators assess *ex-ante* the impacts of their regulation, including on competition and trade, and its consistency with international standards and other relevant regulatory frameworks, they can avoid unnecessary regulatory divergence and promote convergence without binding themselves under international law. GRPs also provide the basic confidence in a regulatory regime necessary to build more active co-operation with other jurisdictions.

What can regulators do to account for the international environment in domestic rule-making?

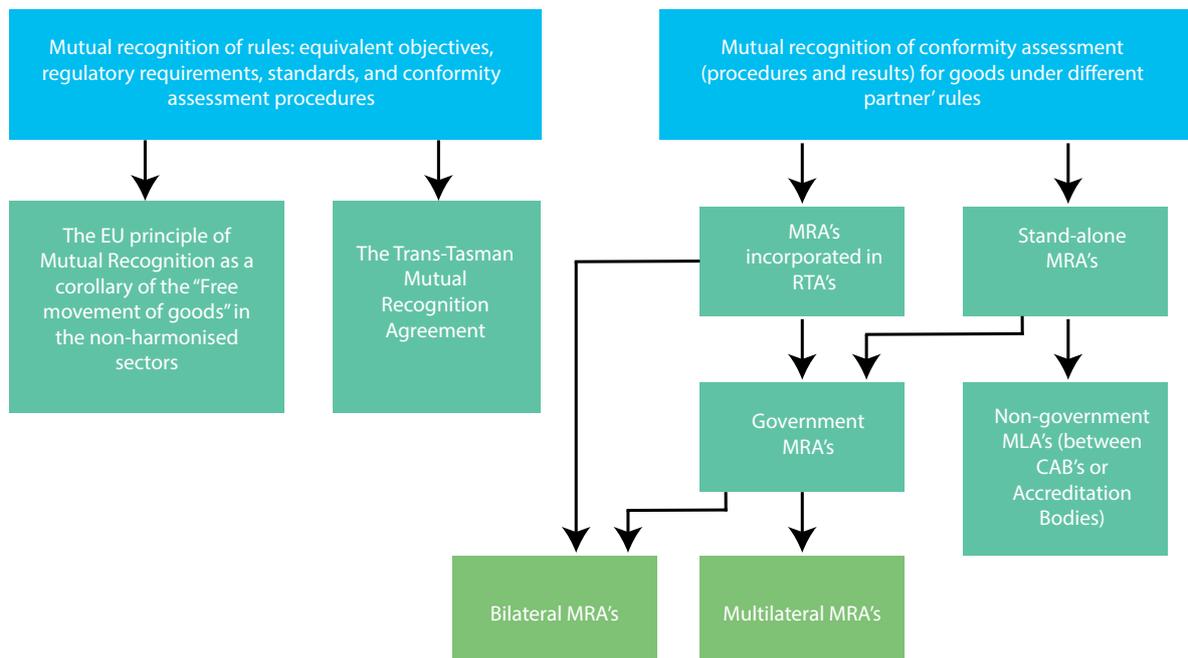
- **Systematically consider the expertise and evidence** accumulated in other jurisdictions on similar issues and the relevance of international standards and other relevant regulatory frameworks when developing or updating laws and regulations.
- **Facilitate inclusive stakeholder consultation** (including foreign), to gather information about the implications of domestic regulation and ensure that findings are fed into the regulatory process.
- **Embed consistency with international standards** and consideration of other jurisdictions' regulatory frameworks in *ex-post* evaluation.
- **Establish a coordination mechanism** in government on IRC activities to centralise relevant information on IRC practices and activities and to build consensus and common language.

Increasingly, countries consider the trade impacts of their regulation - Mexico for example has introduced a sophisticated process in this respect. Reciprocally, trade agreements increasingly call on the contracting parties to adhere to GRP to promote regulatory convergence. This is for instance the case of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP), the Comprehensive Economic and Trade Agreement (CETA), and the Pacific Alliance.

In 2016, Mexico introduced a specific procedure to take into account, when relevant, the trade impacts of regulation as part of its *ex-ante* regulatory impact assessment. Trade impacts are estimated during the impact calculator. When a potential trade effect is detected, it launches a Foreign Trade RIA procedure and coordination with the relevant authorities to notify the draft to the WTO and other FTA partners. The Foreign Trade RIA requires the regulator to answer specific questions, which entail consideration namely of its effects on international trade and the existing international or foreign standards in the field.

MUTUAL RECOGNITION CAN HELP ADDRESS TRADE FRICTIONS WITHOUT MAJOR REGULATORY ADJUSTMENT IN TECHNICAL SECTORS WITH GLOBAL VALUE CHAINS.

Mutual recognition is essentially a trade instrument: goods or services produced under a regulatory regime may benefit from facilitated market access in a country with different rules. There is however a wide spectrum of mutual recognition modalities. While mutual recognition of rules is the most fundamental, it is rarely used except in the EU and between Australia and New Zealand. In most cases, countries settle for recognition of their conformity assessment procedures, i.e. the capability of conformity assessment bodies to test and certify against the rules and procedures of another country.



Source: Correia de Brito, A., C. Kauffmann and J. Pelkmans (2016), "The contribution of mutual recognition to international regulatory co-operation", OECD Regulatory Policy Working Papers, No. 2

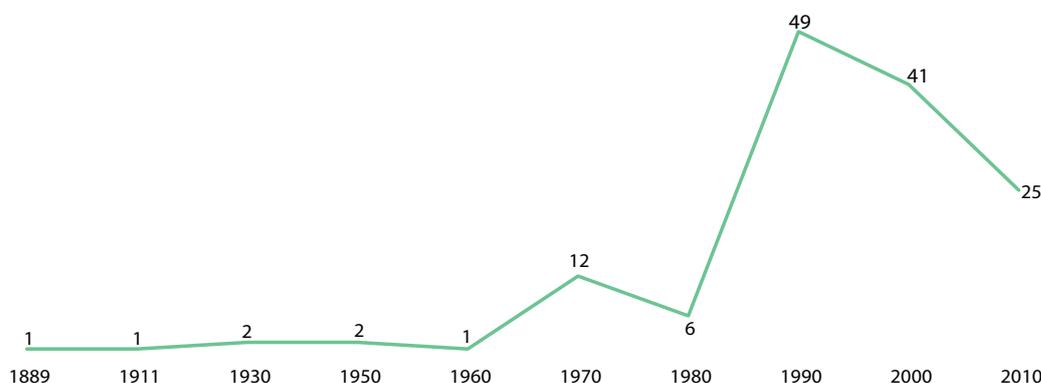
The purpose of Mutual Recognition Agreements (MRAs) is to facilitate market access by eliminating duplicative testing and certification or inspection, reducing the uncertainty about a possible rejection and shortening 'time-to-market'. They are also theoretically appealing to regulators in the sense that they do not imply or require any change in regulation. In effect, governmental MRAs work best in regulatory domains which are science-driven and in sectors with global value chains, where sufficient economic gains are expected such as telecoms equipment, machinery and electronic equipment. They are seen as costly by regulators and the administration both to develop and to maintain.

JOINT RULE-MAKING THROUGH INTERNATIONAL ORGANISATIONS AND ADOPTION OF INTERNATIONAL STANDARDS ARE STRONG DRIVERS OF REGULATORY COHERENCE.

Recognition and incorporation of international norms and standards support the coherence of regulations across jurisdictions. In particular, in response to their WTO obligations, many countries have embedded domestic sectoral or cross-sectoral requirements and procedures to consider the adoption of voluntary international standards in the formulation or revision of domestic technical regulation. They aim to address unnecessary barriers to trade.

The global rule-making landscape is very dynamic with multiple international actors and a fast-growing body of norms and standards. A plethora of international rules and standards exist in areas as diverse as corruption, migration, education, food safety or security, to name just a few. OECD research shows that -on average- countries belong to more than 50 international organisations. Networks of regulators are developing fast. The number of legal and policy instruments surveyed by the OECD in 2015 reached some 70,000, ranging from treaties to technical standards. As a result, domestic regulators are faced with a multiplicity of co-operation alternatives and of international norms and standards available.

Number of trans-governmental networks of regulators established by decade



Source: *The contribution of trans-governmental networks of regulators to international regulatory co-operation, OECD Regulatory Policy Working Paper (2018)*

The uptake of international instruments has sometimes been limited, which may reflect reluctance and mistrust of domestic regulators towards international instruments. Paradoxically, at the same time that international institutions and their instruments are under challenge facing the threat of isolationism by some countries, there is an increasing need for co-operative regulatory solutions to cross-border challenges. Given the stakes, ensuring evidence-based international regulatory co-operation and strengthening trust in international rule-making have become essential.

3. The international context

HOW CAN INTERNATIONAL RULE-MAKERS DEVELOP BETTER NORMS AND STANDARDS?

A wide and varied number of IOs contribute to the internationalisation of regulation

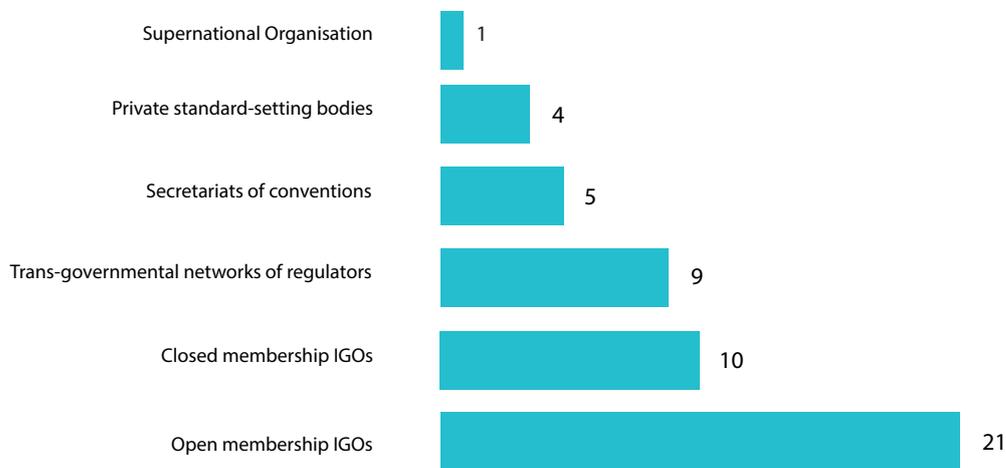
International organisations (IOs) provide platforms for continuous dialogue and have the potential to catalyse the expertise needed to address the emerging policy challenges of our century. But to do so, they must strive for relevance, with always more evidence-based, inclusive, and effective international rules and standards.

To highlight how IOs contribute to IRC, the OECD carried out a survey in 2015, examining the governance, operational modalities, rule-making practices and approaches of a wide range of IOs. The report **International Regulatory Co-operation: the Role of International Organisations in Fostering Better Rules of Globalisation** was released on 2 November 2016, together with studies of the Food and Agriculture Organization (FAO), the International Organization for Standardization (ISO), the International Organization for Legal Metrology (OIML), the World Health Organization (WHO) and the UN Economic Commission for Europe (UNECE). This came in addition to two previous studies of the OECD and the IMO published in 2014.

THERE IS A BROAD LANDSCAPE OF INTERNATIONAL ORGANISATIONS

There is a wide range of international organisations involved in global standard-setting, different in scope, reach and status. Beyond their differences, IOs share strong common features in their rule-making practices, operational modalities, and challenges to remain relevant, efficient and inclusive.

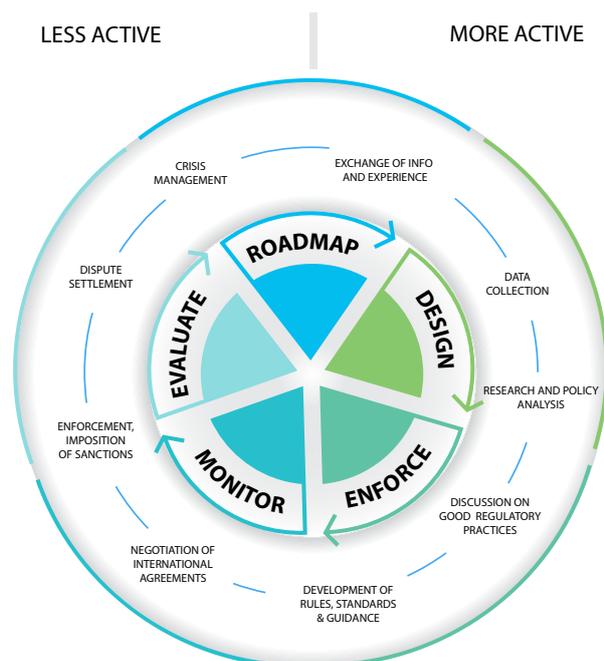
Composition of the sample of international organisations surveyed (2015)



Source: *International Regulatory Co-operation: the Role of International Organisations in Fostering Better Rules of Globalisation*, OECD (2016)

Most IOs are active in the development of rules, and less involved in implementation and enforcement

- IOs develop a broad range of instruments, from legally binding treaties and decisions to softer tools, largely relying on non-legally binding tools.
- IOs are particularly actively involved in the upstream activities of the rule-making process.
- Most IOs are much less involved in the downstream activities of the rule-making process.
- There is high uncertainty in the level of implementation of IO instruments. Only few IOs systematically track the implementation of their instruments. When doing so, the most common approach is to rely on voluntary reporting.



Source: *International Regulatory Co-operation: the Role of International Organisations in Fostering Better Rules of Globalisation*, OECD (2016)

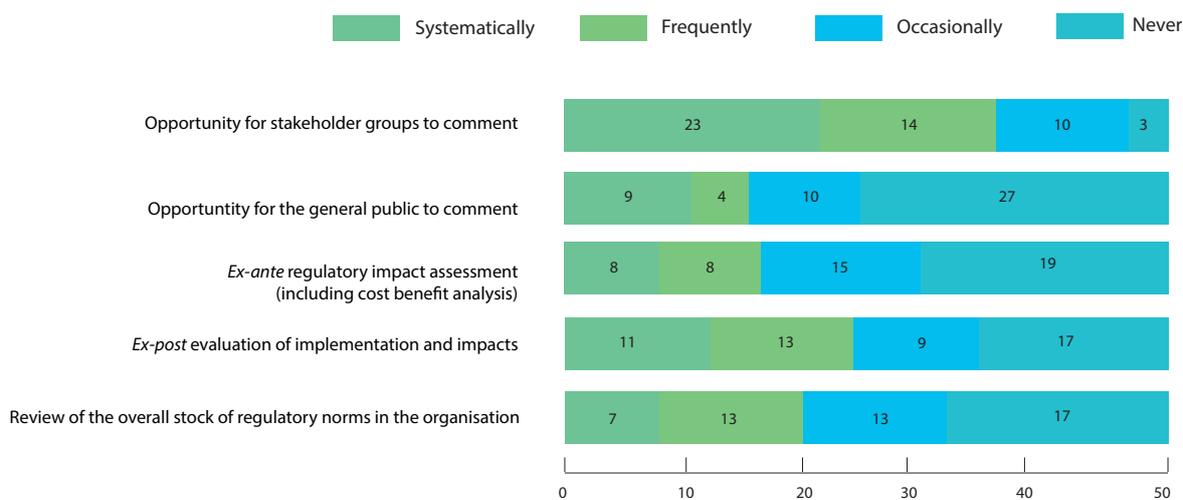
INTERNATIONAL ORGANISATIONS ARE INCREASINGLY CONCERNED ABOUT ENSURING THE QUALITY OF THEIR RULES AND STANDARDS.

International organisations have a key role to build confidence in the quality of international norms and in their capacity to help countries achieve their public policy objectives. To provide confidence to national regulators that they can safely rely on these instruments, international rule-making needs to meet the same high quality, legitimacy and accountability as domestic rule-making.

There is widespread agreement on the good practices to develop rules at domestic level, and the OECD has over 20 years of experience in advising countries in this regard. However, the evidence of what constitutes good international rule-making practices has only recently been the subject of inquiry and discussion.

Efforts have multiplied among IOs in this regard, but more needs to be done

- IOs are showing greater transparency and increasingly reaching out to stakeholders, but their practice in this regard is not always consistent and systematic and all face significant challenges.
- IOs monitor the use of their tools, but much less their impacts, largely because of methodological challenges and lack of resources.
- IOs operate in institutionally crowded areas and coordination efforts among them remain largely informal.



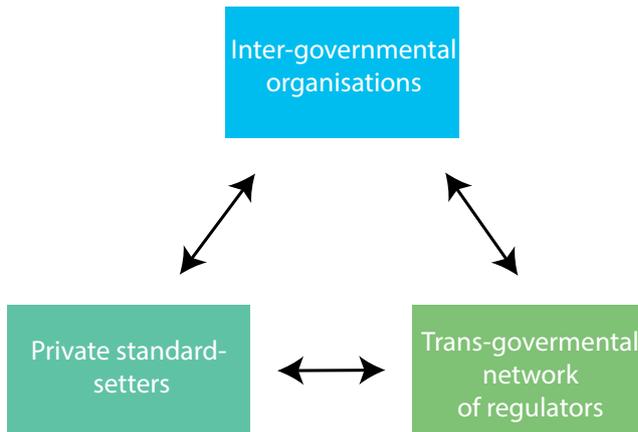
Source: *International Regulatory Co-operation: The role of international organizations in fostering better rules of globalization*, OECD (2016)

Overall, these efforts remain in their infancy. There is a need for IOs to share practices and build more systematic understanding of how they can individually and collectively strengthen the body of international norms and standards through evidence-based and transparent rule-making.

TOWARDS A PARTNERSHIP FOR EFFECTIVE INTERNATIONAL RULE-MAKING

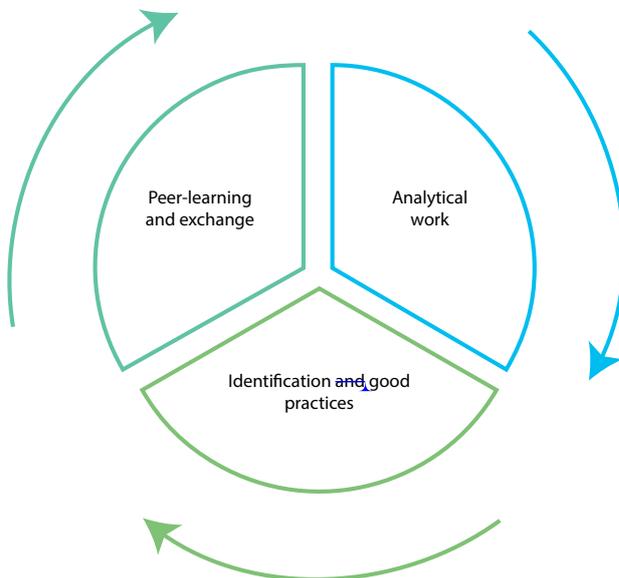
Agreeing on the need for joint efforts to improve international rule-making, 45 international organisations committed in spring 2017 to collective action to promote greater quality, effectiveness and impact of international rules.

A wide variety of partners



- 53 international organisations:
 - 45 participants
 - 8 observers
- The partnership is flexible, cross-sector, and serves a wide variety of organisations involved in international rule-making, notwithstanding their nature or mandate.
- It also invites contributions from a broad range of stakeholders, including governments, the private sector, civil society and academia.

A structured framework



- **Annual meetings** to foster dialogue on shared challenges and support common understanding on good practices in international rule-making;
- **Analytical work** using OECD's long standing method of peer exchange and evidence-based analysis;
- **Collaborative workspace** through an e-platform to facilitate exchange of practices and experience;
- **Working groups** to better tailor the specific needs of IOs and address more in-depth issues.
- A group of **Academic Friends** of the IO partnership to harness expertise and on-going research of relevant academics.

The work is structured around 5 core issues:



KEY PUBLICATIONS, REPORTS AND OECD RECOMMENDATIONS

Review of International Regulatory Co-operation of Mexico (2018)

OECD Regulatory Policy Outlook (2018)

The contribution of trans-governmental networks of regulators to international regulatory co-operation, OECD Regulatory Policy Working Paper No. 10 (2018)

International Regulatory Co-operation and Trade: Understanding the trade costs of regulatory divergence and the remedies (2017)

International Trade and Good Regulatory Practices: Assessing The Trade Impacts of Regulation, OECD Regulatory Policy Working Papers, No. 4 (2016)

The contribution of mutual recognition to international regulatory co-operation, OECD Regulatory Policy Working Papers, No. 2 (2016)

International Regulatory Co-operation: the Role of International Organisations in Fostering Better Rules of Globalisation (2016)

International Regulatory Co-operation: Addressing Global Challenges (2013)

OECD Recommendation on Regulatory Policy and Governance (2012)

www.oecd.org/gov/regulatory-policy/irc.htm

