International Regulatory Co-Operation: the Role of International Organisations
Forthcoming work by the RPC

Meeting of the Regulatory Policy Committee
3-4 November 2014
The OECD Conference Centre, Paris

This document provides information on the on-going and future activity of the OECD Regulatory Policy Committee on the rule-making of international organisations. This activity is developed as part of the work stream on International Regulatory Co-operation.

RPC Delegates are invited to provide written comments by 30 September 2014 in view of the forthcoming publication on rule-making of international organisations to be launched on 3 November 2014.

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Complete document available on OLIS in its original format
1. OECD (2013) *International Regulatory Cooperation: Addressing Global Challenges* identifies the growing role that international organisations (IOs) play as standard setting bodies and in supporting regulatory co-operation in multiple areas. Building on this publication and discussions in the steering group on international regulatory cooperation (IRC), [GOV/RPC(2013)2 - International Regulatory Cooperation: Option for Next Steps] and the 2015-16 Programme of Work and Budget for the Regulatory Policy Committee [GOV/RPC(2014)2/REV2] identify activities in relation to the rule-making of IOs as an important area for future RPC work. In particular, they identify that, while IOs help to establish the rules of the game for globalisation, structured evidence on their impacts and their internal regulatory management disciplines remains scant.

2. To initiate work in this area, the OECD convened on 16 April 2014 a meeting among IOs, OECD member and non-member countries and experts on the ways, means and impacts of the rule-making activities of IOs (the agenda, list of participants and summary for the meeting are available in Annex 1). The meeting, co-organised with the OECD Legal Directorate, built on the contributions of two academics (Professor Ken Abbott and Professor Benedict Kingsbury), as well as on two draft case studies: one on the OECD (provided in Annex 2) and one on the International Maritime Organisation (provided in Annex 3).

3. The meeting gathered representatives from 16 IOs, from 15 member and non-member countries, as well as from stakeholders. The participants welcomed the initiative to engage in a dialogue and agreed on the value of exchanging information on internal procedures and impacts of rule-making activities of IOs. The initiative was deemed timely in a context where a number of IOs are considering the ways of improving the impact and processes of their rule-making. As a follow up to the meeting, a core group of 8 IOs committed to work closely with the OECD on the impacts and processes of their standard-setting activity was established, involving the Food and Agriculture Organization of the United Nations (FAO), the International Labour Organization (ILO), the International Maritime Organization (IMO), the International Standard Organization (ISO), the International Organisation of Legal Metrology (OIML), the United Nations Economic Commission for Europe (UNECE), the United Nations Educational, Scientific and Cultural Organization (UNESCO) and the World Health Organization (WHO).

4. Planned RPC work in this area is expected to develop in close cooperation with other IOs and in partnership with the OECD Legal Directorate. It will involve collecting and analysing information on the practices, instruments and impacts of IO rule-making, based on the development of case studies (following the example of the OECD and IMO case studies) and on a survey exercise to a broad sample of IOs. Progress will be discussed at regular intervals, e.g. through annual meetings, with representatives from member and non-member countries, and with a wider group of IOs, experts and academics. It is proposed that the next meeting of IOs be held back to back to the spring meetings of the RPC in April 2015 (tentatively on 17 April 2015). In the longer run, the work would aim to develop best-practices and shared principles underpinning the development of international standards by IOs.

5. A publication comprising the first case studies of the IMO and of the OECD (provided in Annexes 2 and 3), as well as the contributions by Professor Ken Abbott and Professor Benedict Kingsbury, will be launched at the meeting of the Regulatory Policy Committee on 3 November 2014.
ANNEX 1 – MEETING OF 16 APRIL 2014

INTERNATIONAL REGULATORY CO-OPERATION: The Role of International Organisations

OECD Conference Centre, Room CC15

16 April 2014

AGENDA

The OECD is convening this closed-door meeting that will bring together officials from international organisations (IOs) and member countries to share their experience in supporting regulatory cooperation across jurisdictions in a range of policy sectors, including health, food and agriculture, trade, labour and environment. The meeting is structured in several roundtables introduced by leading academics, building on preliminary case studies, to maximise the opportunities for discussion and inputs from the participants.

International organisations play a growing role as standard setting bodies – in some cases explicit but in many cases not. IOs are developing these standards in response to the increasing needs of globalisation. These international rules help to harness the movement of goods, services, capital and individuals across borders, as well as to reach beyond national boundaries to nurture global goods and mitigate the spread of global “bads”. However, the structured evidence on the impacts of the rule making activities of IOs remains scant (economic and social gains, but also in terms of increased administrative efficiency and capacity). Current trends also raise important risks, including potential fragmentation or regionalisation of regulatory cooperation, competition among IOs and with new actors, mission creep with underfinancing and limited impacts. In addition, although institutional arrangements, operational modalities and regulatory tools have proved to be critical determinants at the domestic level of the quality of regulatory governance, there is evidence that regulatory management disciplines could be more actively used in international rule-making by IOs to garner greater legitimacy and accountability in their standard setting role.

This meeting seeks to establish a dialogue among international organisations and their constituent representatives to exchange information on the ways, means and impacts of their rule-making activities, and to work together towards improved practices in international rule-making. The immediate aim of the meeting is to strengthen the information base on the impact and the internal rule making processes of IOs as standard setters. This objective will be supported through a series of case studies being developed by the OECD and other IOs. A longer-term objective would be for IOs to develop and sign on to shared principles underpinning the development of international standards. In that perspective, the meeting could endorse the establishment of a core group of international organisations that would work together on the development of the guidance and report to the broader group.
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<tr>
<td>9h30</td>
<td>Welcome and Introduction by Gary Banks, Dean of Australia and New Zealand School of Government and Chair, OECD Regulatory Policy Committee</td>
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<tr>
<td>10h00</td>
<td>The role and impact of international organisations in support of IRC</td>
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<td>10h00</td>
<td>1st round of discussion: The growing trend in international regulatory cooperation and the role that IOs play in its support</td>
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<td>Introductory remarks: Kenneth W. Abbott, Professor of Global Studies, Arizona State University</td>
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<td>Key issues</td>
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<td>• How is rule-making adapting to the progressive emergence of an open, dynamic, globalised economy, and the intensification of global challenges?</td>
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<td>• What do we know of the role and impact of IOs in support of more coherent regulatory frameworks?</td>
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<td>11h00</td>
<td>Coffee break</td>
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<td>11h30</td>
<td>2nd round of discussion: The impacts of IOs as transnational standard setters</td>
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<td>Introductory remarks: OECD, APEC, IMO</td>
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• What have we learnt from years of experience with IOs on their strengths and weaknesses in support of IRC?
• What have been the success factors and successful instruments of regulatory cooperation?
• What are the information and other gaps to fill to improve the IRC agenda of IOs?

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| 2h15 – 18h00 | **The rule-making practices of international organisations**

International organisations have over the years developed processes and practices to support their rule-making – such as consultation mechanisms and impact evaluation. The experience of countries has shown that good regulatory management practices are critical determinants of the success of rule-making – in particular they determine the successful implementation of rules by ensuring their credibility and the buy-in of regulators, regulated entities and the public at large. However the evidence on internal regulatory management discipline of IOs remains scant. More systematic exchange of information and experience would enable these organisations to capitalise on lessons learnt and maximise the potential of existing governance arrangements and instruments, thereby improving international rule-making.

Two afternoon sessions will aim to a frank exchange among international organisations on their governance arrangements, operational modalities and tools in support of their rule-making activities. The discussions will seek to identify the good regulatory management practices used by IOs.

*Chair: Nicola Bonucci, Director, Legal Directorate, OECD*

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| 14h15      | **1rst round of discussion**: Governance arrangements and operational modalities of IO in the development of standards**

*Introductory remarks:* Benedict Kingsbury, Director, Institute for International Law and Justice, New York University School

*Open discussion*

*Key issues*

• How do IOs organise to support IRC, through which governance arrangements and operational modalities?

• What regulatory policy tools are used by IOs – public consultation, simplification, implementation mechanisms, and evaluation – in support of their standard development activity?

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| 15h15      | **2nd round of discussion**: Good practices and challenges in the mechanisms and procedures for standard-setting within IOs**

*Introductory remarks:* OECD, European Commission

*Open discussion*
### Key issues

- What have we learnt on the good practices of IOs in support of international rule-making? How can these practices be further improved?
- What are common bottlenecks to the standard setting activity of IOs and how can they be overcome?

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<td>16h15</td>
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| 16h45 | Next steps: Towards dialogue and shared principles for the development of standards  
The last session will provide an opportunity to IOs to discuss potential future joint work, in particular the possibility of developing case studies on impact and rule-making activity of specific IOs; and the establishment of a working group of IOs that would lead the work on shared principles underpinning the development of international standards.  
**Introductory remarks:** OECD  
**Open discussion**  
**Key issues**  
- How can IOs work together towards improved IRC?  
- What could be the next steps in a closer cooperation of IOs on IRC? |
| 17h45-18h00 | Close of the meeting – Yves Leterme, Deputy Secretary General, OECD |
| 18h00 | Cocktail – G. Marshall Room |
LIST OF PARTICIPANTS FROM IOS

Dr. Alan Bollard, Executive Director, Asia-Pacific Economic Cooperation (APEC)
Ms. Elizabeth Golberg, Director of the Smart Regulation and Work Programme of the Secretariat General, European Commission (EC)
Mr. Blaise S. Kuemlangan, Chief, Development Law Service, Legal and Ethics Office, Food And Agriculture Organization (FAO)
Mr. James Lyons, Director of the Division of Nuclear Installation Safety, International Atomic Energy Agency (IAEA)
Mr. Jean-Paul Bouard, Secretary of IEC subcommittee 45A, Instrumentation, control and electrical systems of nuclear facilities, International Electric Commission (IEC)
Ms. Cleo Doumbia-Henry, Director of the ILO’s International Labour Standards Department, International Labour Organization (ILO)
Mr. Ceda Ogada, Deputy General Counsel, International Monetary Fund (IMF)
Ms. Alexandra Szczepanski, Associate Professional Officer, Policy and Planning Unit, Office of the Secretary-General, International Maritime Organization (IMO)
Mr. Andy Henson, Director, International Liaison & communication department, International Bureau of Weight and Measures (BIPM)
Mr. Peter Mason (CIML President), International Organization of Legal metrology (OIML)
Mr. Willem Kool (BILM Assistant Director)
Mr. Kevin McKinley, Deputy Secretary General, International Standardization Organization
Mr. Arnaud Guillot, Legal Adviser, Head, Legal Affairs Unit, International Telecommunications Union (ITU)
Ms. Virginia Cram-Martos, Director of the Economic Cooperation, Trade, and Land Management Division, United Nations Economic Commission for Europe (UNECE)
Ms. Lorenza Jachia, Secretary, Working Party on Regulatory Cooperation and Standardization Policies (W.P.6), United Nations Economic Commission for Europe (UNECE)
Mr. Jacques Rao, Director, Division of Member States and international Organizations of the Sector for External Relations and Public Information, United Nations Educational, Scientific and Cultural Organization (UNESCO)
Mrs. Maria Vicien-Milburn, General Counsel, United Nations Educational, Scientific and Cultural Organization (UNESCO)
Mr. Steve Solomon, Principal Legal Officer, Office of the Legal Counsel, World Health Organization (WHO)
Mr. Willy Alfaro, Director, Trade and Environment Division, World Trade Organization (WTO)
SHORT SUMMARY OF KEY POINTS

The meeting gathered participants from 16 international organisations, from 15 member and non-member countries, as well as from stakeholders. The participants welcomed the initiative to engage in a dialogue and agreed on the value of exchanging information and ideas on internal procedures and impacts of rule-making activities of IOs. The initiative was deemed timely in a context where a number of IOs are considering the ways of improving the impact and processes of their rule-making. In that context, learning from other IOs’ experience and brainstorming collectively on some of the critical issues related to IO rule-making was deemed particularly useful.

The discussions highlighted the growing trend in international regulatory co-operation (IRC) over the last 25 years and the role that IOs play in its support. IOs promote IRC by providing institutionalised platforms for continuous dialogue that help forge common language on regulatory issues. They support regulatory harmonisation through the development of common norms and standards and facilitate regulatory implementation and enforcement through peer pressure and other mechanisms. They can also help to resolve disputes by providing mediation instances or, in some cases, formal dispute resolution mechanisms. An important but often underestimated contribution by IOs is the reduction in administrative costs and the multiplier effect allowed by pulling efforts and resources.

However, growing IRC has also been accompanied by a proliferation of co-operation approaches and instruments, deepening the complexity of the world in which the IOs operate (a number of participants described the IRC world as “untidy”). Today countries and IOs have a vast array of tools and mechanisms that they use and combine to achieve their regulatory co-operation objectives. The discussions highlighted the variety of processes and tools across IOs, some of which are explained by divergences in mandates, but not all. Structured and systematic information with regard to the final impacts of these various approaches and instruments downstream (i.e. the implementation stage at country level) remains scant, with the consequence that decisions on the use of IRC tools are ad hoc, i.e. not informed by evidence.

Participants generally agreed that, although challenging for a number of reasons, greater understanding of the impacts of rule-making of IOs would be useful. Work could develop on two fronts: i) develop greater understanding of the chain of effects of IO rule-making from the design of rules to their implementation and final impacts in countries, possibly differentiating between outputs, outcomes and impacts as suggested by Professor Abbott; ii) working with governments and stakeholders to improve the availability of information in support of such understanding.

Among the challenges which many IOs face is the question of how to ensure that their instruments are fit for purpose and remain relevant over time. A substantial share of the discussions was spent on the internal disciplines and tools to ensure the quality of IOs rule-making. Professor Kingsbury and several participants confirmed that IOs generally have a commitment to good processes and disciplines to ensure the quality of their rule-making. However, often good processes are developed internally and with few reference points. This is an area where the lessons learnt from the application of Administrative Law and regulatory policy (in line with the OECD’s work on this issue) could usefully inform a more systematic approach to rule-making disciplines among IOs. In particular, IOs agreed with the need to consider the potential for greater implementation of the key principles of transparency, participation, review and revision, accountability, for structuring and rationalising rule-making of IOs. In doing so, they acknowledged that a balance needed to be struck between the benefits of these disciplines and their costs.

For example, the discussion clearly highlighted both the importance and the challenges raised by transparency and (public) consultation. Critical issues raised included the trade-off that IOs face between
their transparency and confidentiality requirements; the stage of the regulatory cycle at which to apply transparency and / or resort to consultation; the use of modern communication tools to promote transparency, while respecting accountability etc. Similarly, the discussion highlighted the challenges raised by other regulatory policy tools such as Regulatory Impact Assessment (RIA) – in particular the quantification of the benefits and costs of new regulations and the importance of making this a serious exercise of comparing diverse scenarios (and not a mere formality). There was broad agreement among participants that more collective reflection was needed in these areas.

Discussions also highlighted the importance of a stronger focus in the rule-making activities of IOs on two inter-linked areas: the mechanisms to foster the implementation and the enforcement of rules and the need to reduce administrative burdens (through for instance a more consistent layering of rules). Implementation of IOs global standards relies strongly on relays at national levels. Peer review mechanisms have proved to strongly support implementation. However, other factors or levers clearly contribute to facilitating implementation. In particular, a more consistent and streamlined layering of rules is likely to foster both greater implementation and enforcement by making it easier and less costly to comply. At the same time, attention should be paid to avoiding the risk of lowering regulatory standards.

Finally, several participants highlighted the important trend towards the development of soft law and voluntary approaches, as well as the explosion of transnational private regulation. Conversely, the experiences of the IMO and the EU point to a shift towards increasingly mandatory schemes, away from voluntary approaches. The drivers behind these trends, as well as the interplay between soft law and hard law, and the role of private schemes in rule-making, are important fields for further consideration in public policy. In particular, participants raised the question of whether there should be differentiated processes to ensure the quality of rule-making for soft law and hard law instruments.

**How can IOs work together?**

Several substantive areas for collective efforts were identified, including:

- Clarifying the various terminology used in relation to rule-making of IOs.
- Contributing to a greater understanding of the impacts of IOs rule-making; and improving the availability of related information.
- Analysing the practices and instruments of good rule-making of IOs.

There was a broad agreement on the need for **case studies**, not only as a tool to share information among IOs but, also, as a mechanism to identify gaps and support internal discussions. There was broad agreement that the case studies developed for the OECD and the IMO provided a good starting point and a good structure to organise the information. However, the structure may need to be revised and fleshed out to incorporate additional dimensions. It could also be useful to focus additional case studies on specific instruments to gather insights into the use of different types of instruments.

Several IOs expressed their interest in participating in a **core group** of IOs that would guide the work and report back to the broader group of IOs. Members of the core group could suggest ways to move forward the collective work (one of the first tasks could be to propose amendments to the outline for the case studies), define the scope of joint work, provide preliminary feedback on outputs produced by the group and contribute case studies.
Progress by the core group could be discussed at regular intervals, e.g. through annual meetings. A broader group of IOs could be called to contribute (including IOs which did not participate in the first meeting).

While inputs from IOs will be a necessary condition for the collective work to progress, a broader group of stakeholders could be invited to feed in and support the collective work of IOs – in particular, academic work could usefully complement the collective thinking of the IOs. Partnerships with selected universities could be sought (the NYU could be an important contributor, for example).
ANNEX 2 – Study: International Regulatory Co-operation: the Role of the OECD

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I. INTRODUCTION

The world is witnessing the progressive emergence of an open, dynamic, globalised economy, and the intensification of global challenges such as systemic risks, environmental protection, human health and safety. Against this background, governments are increasingly seeking to ensure greater co-ordination on regulatory objectives, processes and enforcement and to eliminate unnecessary regulatory divergences and redundancies. In this context, International Organisations (IOs) play an important and growing role in international regulatory co-operation (IRC) as standard setting bodies. IOs are developing these international rules to help harness the movement of goods, services, capital and individuals across borders, as well as to reach beyond national boundaries to nurture global goods and mitigate the spread of global “bads”. However, structured evidence on the impacts of the rule making activities of IOs remains elusive. *International regulatory Co-operation: Addressing Global Challenges* (OECD, 2013) identified the investigation of the governance, operational modalities and impacts of rule-making of international organisations as a promising area of work in support of countries’ efforts to deepen IRC.

To initiate this work, the following case study describes how the Organisation for Economic Co-operation and Development (OECD) supports IRC – the context where regulatory co-operation is taking place, its main characteristics, its impacts, successes and challenges. The OECD is an intergovernmental organisation which serves as a forum for information exchange, policy dialogue, and co-ordinated action between countries on economic issues. The paper highlights the fact that the OECD fosters regulatory co-operation in a wide range of policy areas by providing a platform for policy makers to exchange experience and, if appropriate, set standards through the adoption of legal instruments or other policy guidance. The OECD has a renowned track record in evidence based analysis, data and information gathering and publication and peer-review processes upon which it builds to develop and promote the implementation of normative frameworks and standards. It relies on a strong and competent Secretariat to develop the underlying analysis; a Council composed of representatives from member countries to provide oversight and strategic direction; and substantive committees to work with the Secretariat and ensure implementation at country level.

This paper identifies success factors arising from some of the OECD’s key structural characteristics. These include the ability to reach a quick and stable consensus due to the relatively small membership and its like-mindedness. The structure and expertise of the committees allow the OECD to work on very specific topics. The breadth of topics covered and the ability of the Secretariat to link across them allows it to tackle broad questions, identify possible synergies between different areas and work horizontally on issues requiring multidisciplinary expertise. The OECD’s reputational capital has supported the broad acceptance of standards developed by the Organisation, including adherence to standards by many countries outside its membership. The OECD has also shown its capacity to adjust its standard-setting activity over time to new challenges. Peer reviews and peer pressure are the *sine qua non* of the Organisation and have proven to be a strong monitoring mechanism for the various instruments.

In addition, a number of practices in the development of standards contribute substantially to the success of standard setting. Adopting a concrete and practical approach – through the development of guidance, toolkits and specific guidelines of implementation – has proven an important ingredient of success. Public consultations with stakeholder as well as their involvement from the outset when developing legal instruments help forge the consensus and trust necessary to support implementation and to ensure accountability. The OECD has been especially successful where it has pioneered new fields of policy making and has been the first organisation to create legal instruments on a given subject.
At the same time, the case study identifies a number of challenges the OECD faces in supporting IRC. Some are specific to the OECD, for instance in relation to its limited membership. Others apply across IOs. For instance, although there is sporadic evidence showing the economic and social gains, and the increased administrative efficiency and capacity generated by OECD’s activities, structured and systematic information with regard to the final impacts of OECD work and instruments downstream (i.e. the implementation stage at country level) remains scant. This is an area where an increased collaboration with members and non-members is needed. This should include identifying a framework to guide the collection of information as well as the commitment from countries to gather and provide the relevant information.

In addition, the OECD being a decentralised organisation, evidence on the existing range of operational modalities to develop and implement the OECD instruments and other normative tools is dispersed. There is no agreed methodology specifying how to carry out the evaluation of the case for the instruments, the modalities of the consultation processes and the review mechanisms. More work could be done to identify and promote good practices internally and to learn from the experience of other IOs.

This case study should be seen in a broader perspective to establish a dialogue among IOs and their constituent representatives to exchange information on the means and impacts of their rule-making activities, and to work together towards improved practices in international rule-making. To this effect, the OECD hopes that other IOs will undertake similar case studies to take stock of their experience in supporting IRC. Such an information base on the impact and the internal rule making processes of IOs could allow collective reflection on how to underpin the legitimacy and accountability of the international standard setting of IOs, including through the development of shared principles. It would also support greater co-operation among IOs, an important step to address the risk of fragmentation of regulatory co-operation. The contribution of countries will be critical to support this endeavour as they constitute the overlapping constituencies of IOs.

II. THE CONTEXT OF REGULATORY CO-OPERATION

The OECD is an intergovernmental organisation which serves as a forum for information exchange, policy dialogue, and co-ordinated action between countries on economic issues. The OECD replaced the Organisation for European Economic Co-operation (OEEC), which was established in 1948. The objective of the OEEC was for European countries to define for themselves a programme for economic recovery and to allocate financial aid in accordance with that programme. The OEEC also contributed to a significant increase in trade between its members through mechanisms such as the European Payments Union and the Code of Liberalisation of Trade.¹

The future of the OEEC was intensively discussed in the 1950s, following the end of the Marshall Plan, significant economic recovery in Western Europe, the development of the North Atlantic Treaty Organisation (NATO), and the establishment of the European Economic Community. On 14 December

¹ OEEC Council Decision concerning the Code of Liberalisation of Trade of 18 August 1950 [C(50)258].
1960, the OECD Convention² was signed and the OECD was established through the entry into force of the Convention on 30 September 1961.

1. Area of work and intended objectives of the regulatory co-operation

The mission of the OECD is broadly defined. Article 1 of the OECD Convention provides that the aims of the Organisation are: to achieve the highest sustainable economic growth and employment; raise standards of living; maintain financial stability; contribute to sound economic expansion in both member and non-member countries; and contribute to the expansion of world trade on a multilateral, non-discriminatory basis in accordance with international obligations. In essence, the OECD’s goal is to help governments to benefit from increasing interdependence and globalisation while tackling the accompanying economic, social, and governance challenges.

These aims allow extensive room for manoeuvre for the organisation’s activities, which have evolved over the last 50 years (Carroll and Kellow, 2011). In fact, despite its broad mandate, the OECD at first concentrated on the consolidation of its members’ economies (Bonucci and Thouvenin, 2013). Over the decades, the OECD has shifted towards improving national policies (Wolfe 2008), thereby attracting countries far beyond its membership, and strengthening its role as a standard setting organisation.

In line with its broad mandate and focus on economic issues, the OECD’s work today covers almost all areas of government with only a few exceptions such as defence, culture, and sport. Some of the sectors in which the OECD’s work is best-known include macro-economic policy; labour markets; anti-corruption; taxation; education; development; investment; and environment. This wide coverage enables the OECD to also tackle horizontal, multi-disciplinary issues such as innovation or environmentally sustainable development.

In all the above-mentioned areas, the OECD provides a platform for discussion with the objective of reaching consensus on principles and best practices that member countries agree to adopt. The OECD often contributes to the establishment of common standards through the adoption of legal instruments, which then guide the development of domestic regulations. To these ends, the OECD collects, produces and analyses data as well as policies through in-depth reviews in each of the above-mentioned areas. Regulatory co-operation therefore takes place in many different areas and the intended objectives depend on the matter in question.

For example, in the area of chemicals, the development and implementation of the Mutual Acceptance of Data system, under which chemical safety data developed using OECD Test Guidelines and OECD Principles of Good Laboratory Practice in one member country must be accepted in all member countries, follows the objectives of avoiding unnecessary duplication of testing (saving thereby resources for industry and society), minimising non-tariff barriers to trade, reducing the use and suffering of laboratory animals and ensuring a level playing field for the industry with regards to quality requirements.

Furthermore, legal instruments, standards and policy recommendations have been developed in all fields of work of the OECD. Figure 1 illustrates the vast array of sectors covered by these instruments and the importance of the environment as an area of policy co-operation across member countries. 72 of the 252 OECD legal instruments have been developed in relation to environment, 20 with regards to financial markets, insurance and pensions and 18 in the area of information, computer and communication.

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² See the full text of the OECD Convention here: [www.oecd.org/general/conventionontheorganisationforeconomicco-operationanddevelopment.htm](http://www.oecd.org/general/conventionontheorganisationforeconomicco-operationanddevelopment.htm)
Figure 1. OECD legal instruments by sectors (as of end 2013)


2. Landscape of international and domestic regulatory actors in this area and IO position in that landscape

Given the broad, multidisciplinary mandate of the OECD, the landscape of international and domestic regulatory actors and the OECD’s position in this landscape will vary depending on the field of work. For example, the OECD can be regarded as the leading forum and standard setting institution in areas such as anti-corruption, tax or corporate governance. In all areas, whether the OECD is at the forefront or feeding the work of other institutions, it has developed a range of co-operation with other international actors to expand its policy impact and its standards beyond its own membership. The multiplicity of stakeholders involved in regulatory co-operation is a general feature already identified in OECD (1994 and 2013a).

In certain fields, the organisation operates in crowded regulatory environments, where transnational regulatory networks, powerful national or regional regulators, or other international institutions are also important standard setters. The regulatory standard setting in the field of international finance, for example, is dominated by specialised transnational regulatory networks, such as the Financial Stability Board, the Basel Committee on Banking Supervision, the International Organization of Securities Commissions, and the International Association of Insurer Supervisors. However, as reflected in Figure 2, it is an area where the OECD contributes, along with many other actors to the landscape of global financial regulation.
III. MAIN CHARACTERISTICS OF REGULATORY CO-OPERATION IN THE CONTEXT OF THE IO

1. Governance arrangements and operational modalities

a) Membership and participation

The OECD is a global organisation, which is reflected in its membership: it does not have universal membership but its membership is not limited to any particular region. At the same time, it clearly provides a relatively small forum with its 34 member countries. Its membership is thus broader than the European Union or NAFTA, yet much narrower than the United Nations or the WTO.

(1) Evolution of membership

The 20 original members of the OECD were (in alphabetical order): Austria; Belgium; Canada; Denmark; France; Germany; Greece; Iceland; Ireland; Italy; Luxembourg; the Netherlands; Norway; Portugal; Spain; Sweden; Switzerland; Turkey; the UK; and the US.

Since its creation in 1961, the membership of the OECD has progressively been expanded. The geographical reach of the Organisation was expanded with Japan, Finland, Australia and New Zealand joining in the 1960s and 1970s. Mexico, Korea, the Czech Republic, Hungary, Poland, and the Slovak Republic then joined between 1995 and 2000. In 2010, Chile, Estonia, Israel, and Slovenia acceded to the OECD.
OECD. Accession discussions with the Russian Federation were opened in 2007. On 29 May 2013, a new round of accession discussions was launched with Colombia and Latvia and the OECD Council decided to review the situation with a view to opening discussions with Costa Rica and Lithuania in 2015.

(2) Participation of non-members

The notion of the global reach of the OECD has been present since the establishment of the Organisation. Art. 1 OECD Convention provides that one of the aims of the Organisation is to contribute to sound economic expansion in member as well as non-member countries. Currently, more than 80 non-member economies participate in OECD activities. The basis for the participation of non-members in OECD work can be found in Art. 12 OECD Convention, which provides that the Organisation may “invite non-member Governments or organisations to participate in activities of the Organisation”.

One form of participation is for a non-member to take part in the work of a particular OECD committee or sub-body, either as an Associate (requiring adherence to the key OECD legal instruments), Participant (regular invitation on the understanding that the non-member will actively participate and co-operate in the work of the body) or Invitee (invitation to an individual meeting which can be limited to specific agenda items). Another way in which non-members can take part in OECD work is through global initiatives such as the Global Fora.

The OECD in particular maintains close co-operation with five Key Partners (Brasil, China, India, Indonesia and South Africa). The special relationship with the Key Partners was launched in May 2007 and is based on mutual interest. All committees are expected to engage with these countries and can invite them as Participant or Invitee without prior Council approval.

The OECD has also developed co-operation with specific non-members or regions. It can include participation in OECD committees, regular economic surveys, peer reviews in specific policy areas, adherence to OECD legal instruments, and integration into OECD statistical reporting and information systems. The OECD has also developed a number of regional programmes with different substantive focus areas (with South-east Asia, Middle East and North Africa, Eurasia and South East Europe).

b) Structure of the organisation

The structure of the OECD is three-fold: governing bodies; substantive committees and special bodies; and secretariat, as illustrated in Figure 3. The important role given to the substantive committees makes the OECD a ‘decentralised’ organisation. Member countries take the lead within the committees and subsidiary bodies, on the basis of Secretariat analysis. There is no hierarchy between the substantive committees which operate independently. As increasing co-operation between the different committees is required, this can at times represent a challenge. Yet, the OECD’s organisational structure is hierarchical with regards to its decision-making structure: all OECD legal instruments, which are prepared by the substantive committees and their sub-structures, are adopted by the OECD Council, the governing body of the organisation.
(1) Council

Pursuant to Art. 7 OECD Convention, the decision-making body of the Organisation is the OECD Council. The Council is composed of one representative of each member as well as a representative of the EU. The Council, chaired by the Secretary-General, meets regularly – usually once a month – at the level of permanent representatives to the OECD to provide oversight and strategic direction of the activities of the Organisation. A Ministerial Council Meeting, chaired by one or more members, is held annually in order to discuss key issues and set priorities for the Organisation’s work. The Council is assisted in its work by three standing committees: the Executive Committee, the Budget Committee, and the External Relations Committee. These committees prepare the ground for discussions and decisions by the Council and monitor the implementation of such decisions.

(2) Substantive committees

The substantive committees are at the core of the OECD’s substantive work. They shape the agenda of the Organisation’s work in each field, discuss policy issues on the basis of data and analysis by the Secretariat, develop concrete outputs including OECD legal instruments, and monitor the implementation of such standards. Each year, approximately 40,000 delegates from governments attend the meetings of more than 250 specialised OECD committees, working parties, and expert groups, which generate the substantive work of the Organisation in each of its fields of activity. Each committee includes one representative of each member, as well as a representative of the EU. Members are generally represented by experts from national administrations who travel from their capitals to attend the committee meetings. Non-members, international organisations, and NGOs also participate in committee meetings. The frequency of committee meetings is usually between two to four times per year. Committees may also meet at ministerial level from time to time. In addition to the committee structure, the OECD system also includes bodies with special membership criteria such as the International Energy Agency, the Nuclear Energy Agency and the
Development Centre, organisations with institutional links with the OECD such as the International Transport Forum, as well as organisations which are housed by the OECD such as the Financial Action Task Force.

(3) Secretariat

The Secretariat supports the activities of the committees and special bodies in line with the priorities set by the Council. It provides information, analysis and proposals for policy discussions as well as corporate support for the functioning of the Organisation.

c) Decision-making process3

Within the OECD, the general rule is that decisions are made by consensus. Art. 6 (1) OECD Convention provides that, unless unanimously agreed otherwise, decisions shall be taken by “mutual agreement of all the Members”. The term “mutual agreement of all the Members” has been interpreted to mean consensus, i.e. adoption without a vote in the absence of objection by any member. If a standing committee or substantive committee or sub-group is unable to reach agreement by consensus, the issue can be put to a higher level for review and decision. For instance, the Executive Committee can refer a matter to the Council, or a working party can refer a matter to its parent committee.

There are certain exceptions to the rule of decision-making by consensus. First, Art. 16 OECD Convention provides that a decision to invite a country to become a member of the Organisation must be taken by unanimity unless there is a unanimous decision to permit abstention (this has never happened in practice). Second, in accordance with Art. 6 (1) OECD Convention, members have unanimously agreed to allow decisions by qualified majority voting in certain defined cases including the Organisation’s programme of work and budget, and the creation, continuation, and abolition of substantive committees and programmes. Decisions are only taken by qualified majority voting if necessary: every effort must be made to reach mutual agreement. The formula for qualified majority voting within the OECD is that decisions are adopted if supported by 60% of the members, unless opposed by three or more members who represent at least 25% of the scale of financial contributions (assessed contributions).

Pursuant to Rule 6 of the OECD Rules of Procedure, decisions can be taken in session or by written procedure. No distinction is made with regards to the legal value of decisions taken in session and by written procedure, but the majority of decisions are taken at meetings.

Aside from the Convention itself, the rules applicable to the proceedings of all bodies of the Organisation – governing bodies and substantive committees – are set out in the Rules of Procedure of the Organisation.4

d) Budget and dedicated staff

The OECD is funded by its members through assessed contributions which take into account the size of each member’s economy. The largest contributor is the US followed by Japan. There are also optional activities within the OECD which are funded by the participating countries only. The OECD’s budget for 2013 was €354 million. The size of the budget and the programme of work are determined by the Council on a two-yearly basis. Another major source of funding of specific activities are voluntary contributions made by members, and grants by non-members, international organisations and other entities. The rules for the financial management of the Organisation are contained in a set of Financial Regulations and related

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3 The Organisation is currently reviewing its governance arrangements.

Financial Instructions. Independent external auditing of the Organisation’s accounts and financial management is carried out by the Supreme Audit Institution of one of its members, appointed by the Council.

The OECD Secretariat comprises some 2500 staff (both officials and temporary staff), principally policy analysts. The officials of the Organisation, who must be nationals of OECD member countries, are international civil servants who are independent from member governments, and there is no system of nationality quotas. The rules applicable to OECD staff are contained in a set of Staff Regulations, Rules, and Instructions. The Secretariat is headed by the Secretary-General who is appointed by the Council for a renewable term of five years and is assisted by four Deputy Secretaries-General.

2. Forms of IRC

The committees and their subsidiary bodies provide the main platforms for regulatory co-operation. Within these bodies, members can work together to share experiences, discuss policy issues and seek solutions to common problems as well as develop concrete outputs (analytical reports, legal instruments,...) and monitor their implementation.

Art. 3 OECD Convention provides that members will: a) share information with each other and with the Organisation; b) consult together on a continuing basis and carry out joint studies and projects; and c) cooperate closely, taking coordinated action where appropriate. These three elements form the basis for the working methods employed within the OECD (Figure 4). The key characteristic of the OECD method is that it is an evidence-based bottom-up approach, which begins with collection and analysis of data rather than a political decision about the desired outcome of a given project (Bonucci and Kothari, 2011).

These activities cover the entire cycle of regulatory governance (as provided in OECD 2011 and shown in Figure 5) from the design phase to monitoring. The OECD is strongly involved in the activities that precede standard setting, including the collection and exchange of information and the setting of agendas, goals and strategies (Table 1). The development of norms and standards is not systematic but frequent. The OECD also contributes to the monitoring of its instruments. However, whereas few instruments provide some kind of dispute settlement mechanisms (e.g. the Codes of Liberalisation and the Guidelines for Multinational Enterprises), the OECD does not provide for any formal sanctions.
**Figure 4. OECD ways of working**

- Data collection
- Policy analysis and development of a common language
- Policy dialogue and identification of best practices
- Analytical reports
- Agreed policy guidance
- Country benchmarking
- Common typology, classification
- Legal instruments

Implementation and monitoring:
- Peer review
- Multilateral surveillance

**Figure 5. The regulatory governance cycle**

- Policy issues for government action
- Develop policy roadmap
  - Choose the policy instrument(s)
- Monitor and evaluate performance of regulation
- The 4 Cs
  - Consultation
  - Co-ordination
  - Co-operation
  - Communication
- Enforce regulation
  - Design new regulation
  - Check current regulation

Source: OECD (2011)
Table 1. OECD role in the regulatory governance cycle

<table>
<thead>
<tr>
<th></th>
<th>Yes (systematically)</th>
<th>Yes (Frequently)</th>
<th>Yes (occasionally)</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ex-ante exchange of information</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Agenda setting / setting goals / strategies</td>
<td>+</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Formulation of rules / norms / standards</td>
<td></td>
<td>+</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Data collection</td>
<td></td>
<td>+</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Monitoring of instruments</td>
<td></td>
<td></td>
<td>+</td>
<td></td>
</tr>
<tr>
<td>Enforcement – imposition of sanctions</td>
<td></td>
<td></td>
<td></td>
<td>+</td>
</tr>
<tr>
<td>Dispute resolution</td>
<td></td>
<td>+</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Crisis management</td>
<td></td>
<td></td>
<td></td>
<td>+</td>
</tr>
</tbody>
</table>

a) Data Collection and exchange of information

The OECD collects vast amounts of statistical data and other information from its members as well as from a number of non-members, and develops internationally comparable statistical indicators. The OECD is one of the world’s largest sources of comparative statistical, economic, and social data and produces comprehensive data in all of its fields of activity. This data is made available through publications (including an OECD Fact-book) and via on-line databases. The OECD offers a platform for co-operation that allows both the sharing of information and data-collection in the phase prior to the development of standards and when monitoring its implementation.

b) Policy Analysis, dialogue and development of a common language

On the basis of data and information collected, the Secretariat produces policy analysis through in-depth reviews and forecasts, which survey the OECD and other countries. These reports serve as input for discussions in OECD committees. The report prepared by the Secretariat may go through several rounds of modifications in order to become a report by the committee on the particular issue. Policy dialogue takes place within the substantive committees and their sub-groups on the basis of these analytical reports. Members and stakeholders forge a common language on specific policy issues, share their experience on the issues in question and identify common challenges, as well as good practices implemented by certain members in responding to these challenges. This stage can also be the end-point of the work chain, facilitating better policy-making by identifying good practices which can be used, as appropriate, by each member.

c) Analytical reports

Analytical reports can be end products in themselves, published by the Secretariat after discussions in the relevant committee. For instance, the Committee on Fiscal Affairs agreed on a report on the attribution of profits to permanent establishments which became the reference point on transfer pricing, providing detailed guidance as to how the profits attributable to a permanent establishment should be determined. The OECD reports contribute to forge a common understanding of the policy area under consideration.

d) Agreed policy guidance

Standard setting in its broad definition is not limited to legal instruments. Agreeing on policy guidance can also be a way to set standards. Even when Guidelines, Principles or Action Plans do not form part of legal
instruments, they can have strong impact. The Principles for Donor Action on Anti-Corruption (2006) and the Best Practice Guidelines on Biological Resource Centres (2007) are two illustrations of standard setting through agreed policy guidance.

e) Common typologies and classifications

In some cases, OECD work involves stabilising language in a specific domain through the development of classifications and typologies (OECD 2013a). In chemical safety, for instance, this has taken the form of the development and implementation of the Global System of Harmonisation of Classification and Labelling – a joint effort by OECD, ILO and UNITAR. With regards to consumer product safety, the development of a global product taxonomy was seen as essential to support better sharing of information across jurisdictions and tracking of unsafe products across borders.

f) Country benchmarking

An important OECD activity consists in using the information collected from countries to build performance indicators and benchmark the progress of countries. Experience shows that this is a very effective mechanism to incentivise country action. The most well-known cases include the Programme for International Student Assessment (PISA) or the OECD Economic Outlook.

g) Legal instruments

![Figure 6. OECD legal instruments (by date of adoption)](cumulative numbers, as of end 2013)


If it considers it appropriate, the committee may decide to develop its work into an OECD standard in order to achieve closer co-ordination of the policies of OECD members on a given issue. There were 252 legal instruments of the OECD at the end of 2013, setting out binding and non-binding standards in almost all fields of the Organisation’s work. Figure 6 shows the growing number of OECD legal instruments.
(1) Binding/non-binding instruments

There are two types of legally binding instruments: Council Decisions and international agreements. All other OECD instruments, namely the most widely developed OECD Recommendations, are non-binding or “soft law”.

In accordance with Art. 5 OECD Convention, decisions are legally binding on members that do not abstain at the time of adoption. They set out specific rights and obligations and can contain obligatory monitoring mechanisms. There are currently 30 OECD decisions in areas including international investment, mutual acceptance of test data on chemical products, and transboundary movements of hazardous waste. The obligations on members resulting from an OECD decision are similar to those under a treaty – members are bound under international law but the decisions are not directly applicable or self-executing. In practice, it is accepted that, after the adoption of a decision, members will usually need a reasonable length of time in which to take the steps necessary to implement the provisions of a decision.

The most common OECD legal instruments are recommendations: some 180 OECD Recommendations have been developed until end of 2013. Recommendations are non-binding and form part of the extensive body of soft law produced by the Organization. However, within the OECD, recommendations entail a strong political commitment by members which are expected to – and do – take measures for the implementation of the recommendation.

A further sub-category of OECD Acts are decision-recommendations; a legal instrument consisting of one part which is a legally-binding decision and another part which is a recommendation.

It is possible for a member to abstain from the adoption of a decision or recommendation – with the effect that the instrument is adopted but is not applicable to that country – or to make a reservation with regard to a particular provision thereof. It is noteworthy that these possibilities are rarely used. This can be seen as a result of the bottom-up and consensus-based process for the development of OECD instruments which means that a consensus will almost always have been reached before the instrument is presented to the Council for adoption.

Aside from the two categories of legal instrument which constitute the OECD Acts, two further categories of instrument have been developed through the practice of the Organization: declarations (there are currently 25) which are adopted by the adhering countries and noted by Council such as the Declaration on International Investment and Multinational Enterprises and international agreements (there are currently five in force concluded within the OECD framework such as the OECD Anti-Bribery Convention and the Convention on Mutual Administrative Assistance in Tax Matters.

(2) Policy principles/Technical standards

OECD legal instruments, in some cases, set out general policy principles and, in other cases, highly specific technical standards. One example of the first category is the OECD Principles for Transparency and Integrity in Lobbying. As negotiated and carefully drafted statements with a view to have normative significance despite being non-binding, they have been transformed into a OECD Recommendation and constitute today the only policy instrument providing guidance to decision-makers on how to promote good governance principles in lobbying. Examples of the second category include the Agricultural Codes and Schemes which facilitate international trade through the simplification and harmonisation of documentary, inspection and testing procedures.
(3) Narrow vs. broad subject coverage

With its decentralised approach, the OECD demonstrates an enormous flexibility which has been described as one of its most important strengths (Salzman 2011). The bodies of the organisation decide how the different topics should be addressed, taking into account the specificities of the relevant policy areas. Whereas some OECD legal instruments and standards have broad coverage, a great amount is very specific.

3. Ensuring regulatory quality

At the domestic level, countries have developed high level principles and tools to ensure the quality of their regulatory system, as reflected in the Recommendation of the Council on Regulatory Governance and Policy. These principles and tools for good regulatory policy and governance relate to transparency and participation in the regulatory process; regulatory impact assessment; systematic review of the stock of significant regulation; review processes and consideration of other relevant international standards.

Although institutional arrangements, operational modalities and regulatory tools have proved to be critical determinants at the domestic level of the quality of regulatory governance, regulatory management disciplines are not systematically used by international standard setters. In the case of the OECD, evidence shows an uptake in the systematic use of consultation and review mechanisms in the development and implementation of instruments. However, there is no overarching corporate policy that specifies concrete modalities for conducting consultation processes or designing and implementing review mechanisms. This is currently left to the appraisal of each of the committees which have their own working methods. Ways of ensuring more systematic approaches to standard setting across OECD bodies are under consideration.

a) Cost/benefit analysis or ex-ante regulatory impact analysis

Whereas neither the OECD committees nor the Secretariat is undergoing cost/benefit analysis or ex-ante regulatory impact analysis systematically, some reflection on the costs and benefits and the possible impacts form implicitly part of the decision-making process regarding whether and how a project should be carried out. The decision whether or not to move towards the development of a standard is taken by the relevant committee usually on the proposal of the Secretariat building on evidence-based analysis.

b) Consultation

The OECD increasingly undertakes broad consultation to ensure the relevance and facilitate the subsequent implementation of its instruments. The OECD works closely with other actors such as other international governmental and non-governmental organisations as well as business and civil society. There are two standing non-governmental stakeholders with consultative status within the OECD: the Business and Industry Advisory Committee and the Trade Union Advisory Committee, which provide an interface for business and labour organisations.

Broad consultation – beyond the institutionalised platforms – is becoming the norm. The participation of businesses and civil society in the development of the Guidelines for Multinational Enterprises, for example, has facilitated their acceptance and their readiness to implement and use these Guidelines. Likewise, the current reviews of the OECD Principles of Corporate Governance and the OECD Guidelines

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of Corporate Governance of State-Owned Enterprises include stakeholder consultations, which take place at the beginning as well as in later steps of the review process.

However, modalities for conducting consultations differ across Committees (timing of such consultation process, length of the consultation process, means for disseminating the documents, ways of treating feedback), which may reflect the specificity of the policy area under consideration and the number of stakeholders and interested countries or groups.

c) Monitoring implementation

One of the unique characteristics of OECD working methods is the system for monitoring policies and practices as well as the implementation of OECD standards through peer review. The OECD also resorts to other mechanisms to ensure appropriate implementation and monitoring depending on the policy areas. Table 3 summarises these mechanisms, which are developed and illustrated by examples in the section below.

<table>
<thead>
<tr>
<th>Mechanisms</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Peer review mechanism</td>
<td>Systematic and reciprocal assessment of the performance of a member by other members, with the goal of helping the reviewed member to improve its policy-making and comply with OECD standards (OECD, 2003).</td>
</tr>
<tr>
<td>Committee or Secretariat review/assistance upon request</td>
<td>Ad hoc detailed reviews of the policy performance of a country upon its request.</td>
</tr>
<tr>
<td>In-built reporting mechanism</td>
<td>Clauses included in OECD instruments specifying the modalities of review and monitoring.</td>
</tr>
<tr>
<td>National Contact Points</td>
<td>Mechanism that has been developed for the Guidelines for Multinational Enterprises. The main role of the NCP is to further the effectiveness of the Guidelines by undertaking promotional activities, handling enquiries, and contributing to the resolution of issues that arise from the alleged non-observance of the guidelines in specific instances.</td>
</tr>
<tr>
<td>Notification</td>
<td>System that allows the reporting of measures which affect implementation of standards.</td>
</tr>
</tbody>
</table>

(1) Peer review

Peer reviews are conducted on a non-adversarial basis and rely on the confidence of members in the effectiveness and fairness of the process. In this regard, a key element in peer reviews is the existence of established criteria and methodology for assessing performance. These are typically established based on the normative framework provided by the standard and compendium of good practices developed by the OECD. The review results in a series of recommendations addressed to the OECD member, and the implementation of these recommendations is examined during the next review. Peer pressure can be used, if necessary, to bring a member into compliance with an OECD standard and can take various forms including dialogue within the OECD body and rankings between members. The publication of OECD peer review reports constitutes an effective form of pressure on the country concerned through scrutiny by the media and the public.

(a) Country-specific or vertical peer review
Typical examples of peer reviews within the OECD are the regular Economic Surveys carried out on OECD members and selected non-members. The Economic and Development Review Committee (EDRC) is at the core of the OECD’s peer review mechanism. Its role is to examine economic trends and policies in OECD and Key Partner countries, assess the broad performance of each economy and make policy recommendations. The surveys generally include a detailed analysis of a specific structural topic. Recent topics have included education, innovation, fiscal federalism, housing, migration and competition, and these have been based inter alia on cross-country analysis carried out in the Economics Department and in the specialised Directorates at the OECD. This demonstrates one of the key elements of the peer review process: examining a country’s performance in the light of the experience and lessons learnt in other countries. Other examples include Environmental Performance Reviews (EPRs) and Public Governance Reviews which identify good practices and make recommendations to improve the reviewed country’s policies and programmes in the relevant area.

Among the existing peer review mechanisms, some clearly focus on specific instruments of the organisation. Article 12 of the OECD Anti-Bribery Convention requires a programme of systematic follow-up to monitor and promote full implementation of the Convention. Countries’ implementation and enforcement of the Convention and related OECD Recommendations is monitored by the OECD Working Group on Bribery in International Business Transactions through a rigorous peer-review monitoring system, which Transparency International calls the “gold standard” of monitoring. Monitoring takes place in three phases: Phase 1 evaluates the adequacy of a country’s legislation to implement the Convention, Phase 2 assesses whether a country is applying this legislation effectively and Phase 3 focuses on the enforcement of the Convention, compliance with the 2009 Recommendation of the Council for Further Combating Bribery of Foreign Public Officials in International Business Transactions, and outstanding recommendations from Phase 2. Each evaluation of a Party in the Phases 1 to 3 is discussed within the Working Group, the Party under evaluation having the possibility to intervene in the discussions, but having no right of veto (“consensus minus one”). Where the Phase 3 report reveals a lack of implementation, the Working Group may opt for a Phase 3bis evaluation. Questionnaires and on-site visits form part of these evaluation processes. The country monitoring reports, which contain recommendations drawn from the rigorous peer-review examinations of each country, are published on the OECD website.

(b) Thematic or horizontal peer review

The Corporate Governance Committee’s thematic review process is designed to facilitate the effective implementation of the OECD Principles of Corporate Governance and to assist market participants and policy makers to respond to emerging corporate governance risks. Covering more than 25 jurisdictions, these reviews generally take a horizontal approach, although the practices of individual countries (usually three to five countries) are looked at more specifically. By the end of 2013, the Committee completed peer-reviews in areas such as board practices, board nomination and election, the role of institutional investors in promoting good corporate governance as well as supervision and enforcement in corporate governance.\(^6\)

(c) Voluntary peer review

National Contact Points for the OECD Guidelines for Multinational Enterprises have reinforced their joint peer learning activities with the 2011 update of the Guidelines. The voluntary peer reviews highlight the achievements of individual NCPs as well as areas of improvement and recommendations to ensure the efficient structure and functioning of an NCP.

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\(^6\) See: [www.oecd.org/daf/ca/keydocumentsoncorporategovernance.htm](http://www.oecd.org/daf/ca/keydocumentsoncorporategovernance.htm)
(2) Committee or Secretariat review/assistance upon request of a country

In addition to the peer review system, individual members or non-members can request Committees or Secretariat to carry out ad hoc detailed reviews of their policy performance in a particular field in order to help the country evaluate its policy-making and identify areas for improvement. To date, many OECD Directorates have, upon request, carried out such reviews on a great variety of topics, including in the areas of environmental performance, regulatory policy, investment policy, innovation policy.

(3) In-built reporting mechanism

For several years, new OECD Recommendations have systematically included monitoring and review clauses. Box 1 illustrates the trend by providing examples based on the adoption of latest OECD instruments. Monitoring of the implementation of the relevant instrument is generally based on questionnaires and benchmarking. The assessed level of implementation is then presented in a report to Council.

**Box 1 – Examples of monitoring clauses in recent OECD Council Recommendations**

| INSTRUCTS the Public Governance Committee to monitor the implementation of this Recommendation and to report thereon to the Council no later than three years following its adoption and regularly thereafter. |

| INSTRUCTS the Chemicals Committee to monitor closely the technical aspects of implementation of this Recommendation and to report to Council within three years of its adoption and thereafter as appropriate. |

| INSTRUCTS the Employment, Labour and Social Affairs Committee and other competent committees to establish a mechanism to monitor the implementation of the Recommendation through gender activities as specified in their programme of work and budget; in consultation with other competent OECD committees, assess progress through benchmark indicators whilst making use of existing reports on progress with gender equality; and, report to Council no later than four years following its adoption and regularly thereafter. |


(4) National Contact Points

Another example of innovative mechanisms can be found with regards to the implementation of the Guidelines for Multinational Enterprises. Their implementation is monitored through a system of National Contact Points (NCPs). The NCPs facilitate compliance both in assisting enterprises and stakeholders to take appropriate measures to further the observance of the Guidelines and in providing a platform for dispute resolution. In fact, the Guidelines are the only government-backed international instrument on responsible business conduct with a built-in grievance mechanism. These specific instances concern alleged non-observance of the Guidelines and are treated by NCPs, who make their statements publicly available. NCPs can also work jointly to solve cross-border disputes. Beyond, the activity of NCPs is monitored and co-ordinated by the Investment Committee.

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7 The list of their name and contact is available at: [www.oecd.org/da/inv/mne/NCPContactDetails.pdf](http://www.oecd.org/da/inv/mne/NCPContactDetails.pdf)
(5) Notifications of measures affecting implementation of standards

Some instruments contain a provision regarding the notification of non-compliance vis-à-vis the rules they set out. For example, under Articles 11 and 12 of the OECD Codes of Liberalisation, Members shall notify the OECD of any measures having a bearing on their obligations under the Codes. According to Article 1 of the Third Revised Decision of the Council concerning National Treatment, Members shall notify the Organisation within 60 days of their introduction of any modifications of the measures, listed at the time of adherence, constituting exceptions to National Treatment and of any other measures which have a bearing on National Treatment.

d) Ex post evaluation

Beyond the review mechanisms foreseen in specific OECD instruments (see Box 1 above for examples), a system of in-depth evaluation of the performance of committees was put in place in 2005. The overarching goal of in-depth evaluation at the OECD is to provide a mechanism through which Council can assess whether Committees are conducting processes, delivering outputs and achieving impacts that are in line with Members policy expectations and priorities and with the comparative advantage of the OECD; and that represent value-for-money to capitals. Hence, among other issues, in-depth evaluations assess the effectiveness and quality of outputs and the continuous improvement of Committees by learning from best practices, and they ensure that continued policy relevance and a focus on achieving expected outcomes are reinforced in appropriate Committee mandates and Committee structures. The reports to the OECD Council provide detailed recommendations with regards to the relevance, efficiency, effectiveness and sustainability of OECD Committees.

IV. ASSESSMENT OF THE IMPACT AND SUCCESS OF REGULATORY CO-OPERATION THROUGH THE IO

1. Benefits, costs and challenges of regulatory co-operation

Evaluation of the benefits and costs of cooperating through the OECD (as through international organisations more generally) remains an underdeveloped field. Evidence is scattered and anecdotal and further work is needed. This would require more systematic exchange of information with countries on the economic and other impacts of cooperating through the OECD and implementing OECD instruments domestically. As a preamble to such work, OECD (2013a) identifies a number of benefits, costs and challenges associated with IRC (synthesised in Figure 7). The perceived benefits may include the economic gains from reduced costs on economic activity and increased trade and investment flows, the progress in managing risks and externalities across borders, administrative efficiency from greater transparency and work-sharing across governments and public authorities, as well as knowledge flow and peer learning. The perceived challenges include the co-ordination costs, sovereignty issues and the lack of regulatory flexibility, the difficult political economy of regulatory co-operation, and implementation bottlenecks.
OECD (2013a) provides examples of these benefits and challenges across a number of policy areas where the OECD supports co-operation (Tables 4 and 5).

Quantified evidence of these benefits, costs and challenges is scarce and non-systematic. However, chemical safety provides an example where efforts have been undertaken to systematically quantify the benefits and costs of co-operation through the OECD. In 2010, the OECD conducted an analysis to determine the savings that governments and industry accrue from their participation in the OECD Environment, Health and Safety (EHS) Programme for chemical safety, focusing on the benefits of harmonisation through the Mutual Acceptance of Data (MAD) system and burden sharing from working together through the High Production Volume (HPV) programme (Table 6). In parallel, an evaluation of the costs of supporting the EHS Programme was carried out (Table 7).

In addition, OECD (2013b) highlights that qualitative benefits from participating in the OECD chemical safety programme are just as real, likely and important as the quantified benefits. Such benefits include the health and the environmental gains from governments being able to evaluate and manage more chemicals than they would if working independently. They also include the avoidance of delays in marketing new products; according to industry sources, these could represent similar amounts of money as those saved by avoiding duplicative testing (for example, delays in registrations of a pesticide might lead to missed sales for a full growing season). Further, by providing a forum for experienced experts from member countries to discuss scientific issues, the EHS programme is helping countries develop new and more effective methods for assessing chemicals (e.g., approaches for assessing chemicals with endocrine disrupting potential, the effects of chemicals on children, and the effects of exposure to multiple chemicals). Individually, no country could match this level of expertise in each field.
<table>
<thead>
<tr>
<th></th>
<th>Chemical safety</th>
<th>Consumer product safety</th>
<th>Model Tax Convention</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Economic efficiency</strong></td>
<td>By establishing the same quality requirements for tests throughout OECD, a level playing field for the industry is ensured</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Reduced costs on economic activity</strong></td>
<td>By accepting the same test results OECD-wide, unnecessary duplication of testing is avoided, thereby saving resources for industry and society. Reduction in delays for marketing new products</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Increased trade and investment flows</strong></td>
<td>Minimise non-tariff barriers to trade, which might be created by differing test methods required among countries</td>
<td>Reduced obstacles on trade in products.</td>
<td>Abolition of double taxation, an important obstacle to cross-border trade and investment.</td>
</tr>
<tr>
<td><strong>Progress in managing risks and global goods across borders</strong></td>
<td>Better health and environment protection through greater evaluation of chemicals and action taken</td>
<td>More efficient &amp; effective detection and reaction on consumer product safety issues within &amp; across jurisdictions lead to reduced number of injuries.</td>
<td></td>
</tr>
<tr>
<td><strong>Greater transparency</strong></td>
<td>Increased availability of safety data on high production volume chemicals</td>
<td>Greater exchange of information on product safety within and between economies;</td>
<td>Improve transparency and exchange of information in tax matters. This has led to the elimination of bank secrecy as an obstacle to the effective exchange of information upon request.</td>
</tr>
<tr>
<td><strong>Work-sharing across governments</strong></td>
<td>Development of technical instruments that improve the quality of chemical evaluations and regulations</td>
<td>Reduced administrative costs and more coherent responses to consumer product safety issues</td>
<td>Achieving regulatory efficiency gains through the adoption of common standards</td>
</tr>
<tr>
<td><strong>More efficient administrative relations (e.g. clearer and less contentious)</strong></td>
<td>Exchange of information and practices between countries with different policy experience. Development of common language through harmonised classification and labelling systems for chemical products</td>
<td>Improved quality and effectiveness of regulation through exchange of information, access to good regulatory practices and more co-ordinated action.</td>
<td>Flexible co-ordination which facilitates the relations between tax administrations whilst preserving the tax sovereignty of countries involved.</td>
</tr>
<tr>
<td><strong>Other</strong></td>
<td>Reduce the use and suffering of laboratory animals needed for toxicological tests.</td>
<td>Support research on product safety issues</td>
<td>Uniform interpretation of tax treaties allows a reduction in conflicts between taxpayers and tax authorities.</td>
</tr>
</tbody>
</table>

Source: OECD (2013a)
Table 5: Challenges of regulatory co-operation through the OECD in three areas

<table>
<thead>
<tr>
<th></th>
<th>Chemical safety</th>
<th>Consumer product safety</th>
<th>Model Tax Convention</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Legal obstacles</strong></td>
<td></td>
<td>Legal constraints to sharing information</td>
<td>The incorporation of tax treaties into domestic law may raise constitutional &amp; legal issues. The independence of the judicial branch and the fact that judges are not represented in international fora dealing with tax treaties make it difficult to achieve co-ordination in the way domestic courts interpret tax treaties provisions.</td>
</tr>
<tr>
<td><strong>Administrative costs of IRC</strong></td>
<td>Budgetary constraints</td>
<td>Sufficient resources will be required to continuously maintain the portal on product recalls and inventory of initiatives.</td>
<td></td>
</tr>
<tr>
<td><strong>Other</strong></td>
<td>Need for continual adjustment in a context where “easy” issues have been dealt with.</td>
<td>Avoiding duplication of work taking place in other global fora</td>
<td>Countries are free to adopt parts of the standards and ignore others. IRC is not comprehensive in terms of areas covered &amp; country participation.</td>
</tr>
</tbody>
</table>

Source: OECD (2013a)

Table 6: Annual savings resulting from the OECD’s EHS Programme

<table>
<thead>
<tr>
<th>Savings due to:</th>
<th>Savings (Euro)</th>
</tr>
</thead>
<tbody>
<tr>
<td>New chemicals</td>
<td>27 576 000</td>
</tr>
<tr>
<td>• no need to repeat testing</td>
<td></td>
</tr>
<tr>
<td>New pesticides</td>
<td>134 640 000</td>
</tr>
<tr>
<td>• no need to repeat testing</td>
<td></td>
</tr>
<tr>
<td>• use of OECD dossier format</td>
<td>1 546 800</td>
</tr>
<tr>
<td>• use of OECD monograph format</td>
<td>2 408 700</td>
</tr>
<tr>
<td>High production volume chemicals</td>
<td>1 547 400</td>
</tr>
<tr>
<td>• no need to repeat testing; ability to use quantitative structure activity relationships (Q)SARs following OECD principles</td>
<td></td>
</tr>
<tr>
<td>• use of co-operative assessments</td>
<td>508 680</td>
</tr>
<tr>
<td><strong>Total savings (not counting costs)</strong></td>
<td>168 230 000</td>
</tr>
</tbody>
</table>

Source: OECD (2010).
Table 7. Estimated total annual costs of supporting the EHS Programme

<table>
<thead>
<tr>
<th>Country costs</th>
<th>Secretariat costs</th>
</tr>
</thead>
<tbody>
<tr>
<td>Number of meetings&lt;sup&gt;a&lt;/sup&gt;</td>
<td>99</td>
</tr>
<tr>
<td>Average length of meetings&lt;sup&gt;b&lt;/sup&gt; (days)</td>
<td>2.52</td>
</tr>
<tr>
<td>Total number of participants&lt;sup&gt;c&lt;/sup&gt;</td>
<td>3 589</td>
</tr>
<tr>
<td>Travel costs&lt;sup&gt;e&lt;/sup&gt;</td>
<td>EUR 5 578 700</td>
</tr>
<tr>
<td>Country staff costs&lt;sup&gt;g&lt;/sup&gt;</td>
<td>EUR 6 069 100</td>
</tr>
<tr>
<td>Grants&lt;sup&gt;h&lt;/sup&gt;</td>
<td></td>
</tr>
<tr>
<td>Total country costs</td>
<td>EUR 11 648 000</td>
</tr>
</tbody>
</table>

<sup>a</sup> Yearly average over the period 2006 to 2007 (from EMS data).

<sup>b</sup> The Part I Budget is the regular OECD Budget to which all member countries contribute.

<sup>c</sup> The average length of meetings is a weighted average based on the number of participants and the length of each meeting.

<sup>d</sup> Yearly average over the period 2006 to 2007 (from EMS data).

<sup>e</sup> Travel costs (rounded) = travel [weighted average cost of round-trip flight (EUR 1 000) x number of participants (3 589)] + expenses [length of meetings (2.52 days) x daily expenses (EUR 220) x number of participants (3 589)].

<sup>f</sup> The Part II budget constitutes assessed extra-budgetary contributions made by 27 out the 30 member countries to support the Special Programme on the Control of Chemicals.

<sup>g</sup> Country staff costs (rounded) = participation [length of meetings in hours (2.52 x 8 = 20.16) x number of participants (3 589) x staff costs per hour (EUR 36)] + preparation [(133% x 20.16 = 26.8128) x number of participants (3 589) x staff costs per hour (EUR 36)].

<sup>h</sup> Extra-budgetary contributions from countries to support specific activities in the EHS Programme.

Source: OECD (2010).

2. Assessment of success

Two aspects need to be looked into to assess the impact of the regulatory co-operation within the OECD: the comprehensiveness of the regulatory co-operation and the level of compliance.

a) Comprehensiveness: how is the OECD going global?

Achieving comprehensiveness is a critical dimension of international regulatory co-operation. It is defined by Levy (2011) by the extent to which legal instruments cover countries that significantly affect the outcome that is being regulated. Given its limited membership, achieving comprehensiveness is a key challenge for the OECD. While initially, its membership reflected 80% of the World GDP, this share stands today at 68% (Table 8).

Table 8. Evolution in OECD membership and its share of the world GDP

<table>
<thead>
<tr>
<th>Year</th>
<th>OECD Membership</th>
<th>Share of World GDP</th>
</tr>
</thead>
<tbody>
<tr>
<td>1961</td>
<td>Austria, Belgium, Canada, Denmark, France, Germany, Greece, Iceland, Ireland, Italy, Luxembourg, Netherlands, Norway, Portugal, Spain, Sweden, Switzerland, Turkey, UK, US</td>
<td>80%</td>
</tr>
<tr>
<td>1980</td>
<td>Previous + Japan, Australia, New Zealand, Finland</td>
<td>74%</td>
</tr>
<tr>
<td>2000</td>
<td>Previous + Czech republic, Hungary, Korea, Mexico, Poland</td>
<td>81%</td>
</tr>
<tr>
<td>2010</td>
<td>Previous + Chile, Estonia, Israel, Slovenia</td>
<td>68%</td>
</tr>
</tbody>
</table>


This challenge is reflected in the case study on chemical safety (OECD, 2013b), which highlights that “the shift in chemical production from OECD countries to non-members can make the OECD less representative and less influential in the global setting when not enough attention is paid to outreach”. Involving new players has therefore become a critical step to preserve the balance of interests in the co-
operation, but may involve important challenges. With increased number of players involved, the process of obtaining consensus may become slower for instance. In the area of tax, “the OECD limited membership means that not all countries, especially major emerging economies, are directly involved in the development of the internationally-agreed standards. As a general rule, countries are also, in effect, free to adopt parts of the internationally-agreed standards and ignore others (OECD, 2013b). However, these challenges are now being addressed in different ways.

(1) Inviting non-members to adhere to OECD instruments

In the past, only OECD Members adhered to the Organisation’s legal instruments with a few exceptions. OECD legal instruments now routinely include a paragraph inviting non-members to adhere to OECD instruments. For example, the recently adopted OECD Recommendation of the Council on Gender Equality in Education, Employment and Entrepreneurship “INVITES non-members to take due account of and adhere to this Recommendation and to collaborate with the OECD to exchange policy principles, guidelines, good practices and data on gender equality in education, employment and entrepreneurship”. Non-members can adhere to an OECD legal instrument at the time of its adoption or at any time thereafter. Non-members actively make use of these possibilities (see Figure 8 for selected examples). Non-members have also publicly accepted an OECD standard without formally adhering to the relevant legal instrument. The best examples are the OECD standard on exchange of information set out in Article 26 of the OECD Model Tax Convention, and the OECD Principles on Corporate Governance (see further below).

Figure 8. Non-member adherence to OECD standards as of 31 March 2014 (examples)

- Declaration on International Investment and Multinational Enterprises and the related instruments: 12 non-members (Argentina, Brazil, Colombia, Costa Rica, Egypt, Jordan, Morocco, Latvia, Lithuania, Peru, Romania and Tunisia)
- Decision of the Council concerning the Mutual Acceptance of Data in the Assessment of Chemicals: 7 non-members (Full adherence: Argentina and Brazil for industrial chemicals, pesticides and biocides; India, Malaysia, South Africa and Singapore; Provisional adherence: Thailand)
- Anti-Bribery Convention: 7 non-members (Argentina, Brazil, Bulgaria, Colombia, Latvia*, Russia, and South Africa)
- OECD Schemes for the Varietal Certification of Seed Moving in International Trade: 26 non-members (across Africa, Asia, Europe, the Middle East and Latin America)
- Convention on Mutual Administrative Assistance in Tax Matters: 29 non-members are Signatories and 16 are Parties to the Convention (across Africa, Asia, Europe and Latin America)*
- OECD Standard on Exchange of information (Art. 26 Model Tax Convention): 87 non-members

* The Convention will enter into force for Latvia on 30 May 2014.
° The Convention will enter into force for Croatia and Lithuania on 1 June 2014 and for Colombia on 1 July 2014.

As Figure 8 shows, seven non-members are parties to the Anti-Bribery Convention, including Brazil, Russia and South Africa. While there are still some major economies missing including China, India and
Indonesia, the 40 countries that have joined the Convention generate nearly two-thirds of total world trade and 90% of outward foreign direct investment.

(2) Inviting non-members to participate in the development or revision of legal instruments

Non-members are also involved in the development or revision of legal instruments and this is particularly important in order to ensure shared ownership of the resulting standard. Participation can be as Associate i.e. on an equal footing with OECD Members with an expectation that the non-member will adhere to the resulting standard or as Invitee. This has been the case of the 2011 revision of the Guidelines for Multinational Enterprises in which six non-Members were invited to participate including China, India and Russia. On-going examples are the development of legal instruments on base erosion and profit shifting (BEPS) in which ten non-members, including all G20 members, are participating as Associates and the revisions of the OECD Principles on Corporate Governance, the OECD Guidelines on Governance of State-Owned Enterprises in which twelve economies, including all G20 and FSB members have been invited to participate as Associates.

(3) Incorporation of OECD Standards in Other Frameworks

OECD standards have been incorporated into other legal frameworks with broader adherence. For instance, a series of OECD legal instruments creating a system governing the transboundary movements of wastes were used as the basis of the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal, which now counts 180 Parties. Another example is the principle agreed by OECD members in a 1984 Recommendation that the export of a hazardous chemical from an OECD country would require the importing country to be informed, which was the basis for UNEP and FAO to develop the Rotterdam Convention on Prior Informed Consent Procedures in 1998.

(4) Co-operating with other IGOs and G20

Partnerships and specific joint initiatives with other international organisations are other important examples of the OECD’s co-operation beyond its membership. The OECD currently has 11 Partnership Agreements with international organisations including the World Bank, the United Nations Conference on Trade and Development (UNCTAD) and the International Labour Organization (ILO) and is a partner of innumerable joint initiatives. On a regular basis, the OECD is a co-author of joint publications with other international organisations. On top of this, some 70 international organisations participate in the meetings of OECD committees as observers or on an ad hoc basis in specific meetings.

The OECD has worked closely with the Group of Eight (G8), providing analysis and contributing to the implementation of the priorities set by the G8 as well as supporting the dialogue of the G8 with major emerging economies and developing countries. The OECD has been supportive on a broad range of issues on the G8 agenda on tax, transparency and trade. As an example, at the Lough Erne Summit in June 2013, G8 Leaders agreed on concrete steps to put in place a global, secure and cost-effective model of automatic exchange of tax information on the basis of the OECD’s work in this field.

The OECD increasingly co-operates with the Group of Twenty (G20), which is establishing itself as the “premier forum for international economic co-operation”.8 The OECD has participated in the G20 summits and their preparatory work in order to help achieve substantive outcomes. For example, the OECD is leading the G20’s work on fighting tax evasion and taxation of multinational enterprises (Base Erosion and Profit Shifting) by updating and upgrading national and international tax rules in order to build efficient and fair tax systems. Overall, the OECD has consolidated its role within the G20 on the issues within its competence, contributing also to the structural policy dimension of the G20 Framework for Strong.

Sustainable and Balanced Growth and participating in its own right in the G20 Anticorruption Working Group.

b) Level of implementation

As noted above, the OECD does not have strong tools to enforce its standards. However, for an organisation with mostly non-binding instruments, the level of compliance is generally high. The reasons for this can be found in the consensus- and evidence-based approach, the dialogue leading to the identification of best practices and the monitoring mechanisms put in place to facilitate implementation even of non-binding norms. The importance attached to non-binding instruments is demonstrated by the fact that members abstain from the adoption of a decision or recommendation or make a reservation with regard to a particular provision thereof even though the resulting instrument is not legally binding.

Besides regular reporting, no standardised methodology has been put in place to measure the level of implementation and compliance. Likewise, there is not much concrete quantifiable evidence of the level of implementation, as this is difficult to measure. However, there are exceptions. For example, a quantified approach has been used by the Committee for Scientific and Technological Policy to benchmark implementation by Members as compared to accession candidate countries. The level of implementation by the candidate country was measured against the median of the level of implementation of OECD Members.

As an external evaluation of the effectiveness of implementing the Anti-Bribery Convention, Levy (2011) notes that even in this case where enforcement is left to national level, the monitoring performed at international level has the potential to buttress credibility. “As the difficult interactions between the OECD’s anti-corruption compliance monitoring program and the British authorities showed, robust monitoring does not translate directly into enforcement. But that same example also demonstrates that peer pressure, anchored in prior endorsement of globalized rules and robust, transparent globalized monitoring can have an impact, even on the actions of sovereign, national governments.”

The Export Credits Arrangement, which aims at providing a framework for the orderly use of officially supported export credits, benefits from a very high level of compliance. The key factors for this level of compliance are: First, the Arrangement adopts a pragmatic approach towards compliance. Indeed, a prior notification of the intention to derogate to specific rules is required. As a consequence, the set of rules including the derogations are agreed upon and are followed by the Parties. Second, the rules have been incorporated in the EU and WTO law and are referenced to in WTO dispute settlements. In this regard it is important to note that the European Union is one of the nine Participants of the Export Credits Arrangement, thus all EU Member States are included and the Arrangement rules have been incorporated into legally binding EU legislation.

c) Factors of success

Several factors of success can be identified, which are often inter-related. The first category arises from the key characteristics of the OECD and is of a structural nature; the second category relates to specific practices in the standard setting process and to the nature of the policy area under consideration. Key OECD characteristics that have been factors of success involve its capacity to reach consensus quickly owing to the like-mindedness of its members, its multidisciplinary expertise, its focused approach and its capacity to adapt to new developments. In the second category, when the OECD has been able to adopt a pragmatic approach, establish strong monitoring mechanisms and stakeholders’ engagement, and has pioneered new fields of activity or set the grounds for international standards, its standard-setting activity has been particularly effective.

Figure 9. Success factors
(1) Capacity to reach consensus quickly

The relatively small membership and its like-mindedness enable the OECD bodies not only to reach consensus quickly, but to reach also a stable consensus. Moreover, the success of the peer review system within the OECD can be attributed to this like-mindedness and the high degree of mutual trust between them. The constructive and collaborative attitude of members to the review mechanisms is essential to its effectiveness. As shown in OECD (2013b), success in the area of chemical safety has been a function of trust building among stakeholders. This has relied strongly on a phased approach involving the development of a common language; the alignment of testing methods and GLP; and the establishment of binding Council Acts on Mutual Acceptance of Data. Building on this capacity, the OECD has shown that it could lay the initial groundwork for broader international consensus and function as a laboratory of cooperation experiments (OECD 2013a).

(2) Multidisciplinary expertise

Being multidisciplinary, the organisation can tackle broad questions, identify possible synergies between different areas and work horizontally on issues (Kothari, 2013). For example, regarding the water challenge, the OECD identifies the priority areas where governments need to focus their reform efforts. It contributes analysis to improve the information base, identifies good practice, and provides a forum for exchanging country experiences with a multidisciplinary approach involving various OECD Directorates. Within the OECD, members have addressed issues such as financing, governance, policy coherence and private sector participation. Ongoing work also covers water security, green growth, climate change adaptation, water allocation and urban-water management.
(3) Focused activities

The OECD’s approach to develop very specific instruments has generally proven to be successful. For example, an important part of the OECD Anti-Bribery Convention’s success is due to the fact that it is not just the first, but still the only international legal instrument focused on the ‘supply side’ of the bribery transaction, i.e. the supply of bribes by nationals of States Parties to public officials in any foreign country including countries which are not parties to the Convention. This narrow focus facilitates the rigorous monitoring of the performance of each Party which would be more difficult with a broader set of issues.

(4) Flexibility and capacity to adapt to new developments

OECD instruments and standards have shown their capacity to adjust with time. OECD (2013a and 2013b) recalls the evolution in the focus of the co-operation on tax matters as a good illustration of this constant adaptation. From the 1920s to the early 1980s, co-ordination efforts in the tax field were primarily directed at developing the network of bilateral tax treaties through the drafting of standard provisions to help the negotiation and conclusion of bilateral tax treaties. In the early 1980s, the co-ordination efforts of the OECD and its member countries started to focus a lot more on the interpretation and application of existing treaties. The co-ordination efforts have gradually moved from improving market access (through the removal of double taxation) towards conflict avoidance and resolution and facilitating the inter-operability of tax systems. Over the last 10 years, there has been another shift in the main objective of the co-ordination towards improved transparency and exchange of information in tax matters.

The OECD is also able to adapt to new challenges quickly. This can be illustrated with the recently started OECD project on base erosion and profit shifting (BEPS). Where multinational enterprises exploit the gaps of national tax laws by avoiding taxation in their home countries with their activities falling under low or no tax jurisdictions, the integrity of tax systems is at stake. The OECD has quickly adapted to this new challenge in reorganising the work and bodies of its Committee on Fiscal Affairs and involving non-members from the outset. At the request of G20 Finance Ministers, the OECD launched an Action Plan on BEPS in July 2013, identifying 15 specific actions needed in order to equip governments with the domestic and international instruments to address this challenge.

(5) Pragmatic and concrete/practical approach

Legal instruments as well as policy guidance and analytical reports etc. show great successes when a concrete and practical approach is being taken. Concrete guidance, toolkits and specific guidelines of implementation have proven to be extremely helpful to governments and other actors. With these, member countries have the practical tools to develop, foster or implement agreed policies. They are developed in all areas of work of the OECD. One example is the unprecedented investment sector-specific risk-assessment tool and due diligence guidance embodied in the Recommendation on Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas.9

(6) Strong monitoring mechanisms

Monitoring mechanisms, namely the peer reviews, are considered motors of the regulatory co-operation (Bocquet, 2012). Where monitoring has been effective, the co-operation has proved a success. The rigorous monitoring in the area of anti-bribery with its strong peer pressure, for example, represents one of the success factors of the Anti-Bribery Convention and its related instruments.

(7) **Strong stakeholders buy-in and support**

Public consultations with stakeholders as well as their involvement from the outset when developing legal instruments ensure the stakeholders’ buy-in and support. This is important to forge a consensus that will support implementation and to ensure accountability of the IRC mechanism. As noted above (Section III., 3. b), consultations have played an important role in the development and update of the Guidelines for Multinational Enterprises and form part of the current review processes of the OECD Principles of Corporate Governance and the OECD Guidelines of Corporate Governance of State-Owned Enterprises. Moreover, the OECD has put in place different formats, where multi-stakeholder discussions are held. Global Fora, which are regularly organised on specific topics including finance, development, education, tax, investment, and environment, are opened up for broader participation.

(8) **Pioneering new fields of policy making/regulatory activity**

The OECD has been especially successful where it was the first organisation to create legal instruments on a given subject, as has been the case for the instruments on capital movements and for most environmental OECD instruments in the 1970s. The OECD was the first intergovernmental organisation to create a separate environmental division. Its Environment Directorate was set up in 1971 – before the convening of the first UN summit on environmental protection in Stockholm in 1972, which is commonly perceived as the beginning of modern international environmental law. As the success story of the polluter-pays principle demonstrates,\(^\text{10}\) being the only international standard setter can equally be regarded as an important factor for success. It was first mentioned at the international level by the OECD in a Recommendation of 1972.\(^\text{11}\)

Similarly, this has been illustrated by the Agricultural Codes & Schemes, which were created in the late 1950s/early 1960s, by the OEEC (the predecessor organisation) and then the OECD. The OECD has also been a pioneer with its Decision of the Council concerning the Mutual Acceptance of Data in the Assessment of Chemicals and related instruments, which establishes a system under which data on chemical safety, developed in one adhering country using a specific set of test methods and following certain principles for good laboratory practice, are recognised by another adhering country. This pioneering system eliminated the need for each country to test and assess the same chemical or chemical preparation, which is a resource-intensive process.

(9) **Capacity to set internationally accepted standards**

Several OECD standards have subsequently been accepted by the international community to constitute the international standard on a particular issue. The OECD standard is thus considered to be a reference point and is applied beyond the OECD membership. For example, the Model Tax Convention is now the most widely used model for bilateral tax treaties worldwide and its Article 26 is recognised by 121 jurisdictions to be the international standard on exchange of information. The OECD Principles on Corporate Governance have been included as one of the 13 key standards of the Financial Stability Board and are applied in country reviews by the International Monetary Fund and the World Bank.

\(^{10}\) Pursuant to this principle, the polluter should bear the expenses of carrying out the pollution prevention and control measures decided by public authorities to ensure that the environment is in an acceptable state.

\(^{11}\) OECD Recommendation of the Council of 26 May 1972 on Guiding Principles concerning International Economic Aspects of Environmental Policies [C(72)128].
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I. Introduction

Globalisation and the intensification of global challenges - related to systemic risks, environmental protection, human health and safety - have posed regulatory challenges to governments. In this context, international regulatory co-operation has become increasingly important. International organisations play an important role as standard setting bodies, but comprehensive evidence on the impacts of their rule making activities remains elusive. The 2013 OECD-publication *International regulatory Co-operation: Addressing Global Challenges* identified rule-making of international organisations as a promising area of work in support of countries’ efforts to deepen international regulatory co-operation. To initiate this work, the following case study assesses the case of the International Maritime Organization (IMO): its institutional context, its main characteristics, its impacts, successes and challenges.

International shipping provides a unique case of international regulatory cooperation, considering the global nature of the sector, the world-wide impacts and the risk of free rider-behaviour. The regulation of shipping is based on an ingenious institutional architecture, with the interplay of public and private actors providing incentives for the sector to abide by the standards adopted by the International Maritime Organization, the main standard setting body for shipping. A wide variety of instruments is applied to ensure enforcement of international conventions with regards to shipping, including inspections, self-regulation, benchmarking, consultation, ex ante impact assessments, peer reviews and stocktaking of administrative burdens.

The impact of international regulatory co-operation in shipping through the IMO is generally positive. Accident rates have gone down, shipping-related pollution has decreased and maritime safety has improved, which can be related to the implementation of major international maritime conventions. Notwithstanding the positive impacts, several regulatory challenges in shipping remain. These include the quality of seafarers, ship recycling and a variety of new issues, such as Arctic shipping. Avenues for reform include stronger incentives at the national level against substandard ships (e.g. fines and other punishments) and strengthening implementation, via harmonisation of the different port state control regimes, and via focused development assistance to improve implementation capacity of developing port control states.

II. The context of regulatory cooperation

1. Area of work and intended objectives

Maritime transportation is one of the truly global human activities. Shipping companies operate globally, with a very international workforce that is constantly moving, along with ships that are most of the time outside territorial waters, so outside national jurisdictions. The shipping industry is increasingly structured as a “global value chain”, composed of multiple linked enterprises scattered around the globe. This globalised sector has world-wide impacts: vessels pose a potential threat to the international community at large; the threat of accidents with associated environmental and economic costs has been one of the drivers for attempts at global regulation of the sector. The global nature of the shipping sector has increased tendencies of regulatory avoidance, via re-location (re-flagging) to places with lower regulatory standards, with the associated risk of a “race to the bottom”. Maritime states are in many cases not directly confronted with the externalities related to this race to the bottom, which makes shipping

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12 E.g. a sub-standard ship is more likely to be the vessel involved in support of terrorist activities or to convey a weapon of mass destruction (WMD) or associated materials rather than a more respectable vessel operated by law-abiding owners or ship operators. Enhancing port state control to enforce IMO regulations on maritime safety has been identified as probably the most effective method of combating a wide variety of maritime crime including trafficking (Griffiths and Jenks, 2012).
different from many other activities\textsuperscript{13}. Ships are most of the time on open seas, need not even call ports of the states in which they are registered\textsuperscript{14}, and the nationals of registry states are not any more likely to be employed on these ships, so will not be particularly impacted by low labour standards (DeSombre, 2006). These characteristics result in ample possibilities for freeriding, of individual actors and states having an incentive to avoid regulation, since the effects of non-abidance are diffused. The story of international regulation of shipping in recent decades is on how to regulate the sector considering inherent risks of regulatory avoidance.

The case of the international regulation of shipping has a wider relevance. There are generic lessons that can be drawn from the mechanisms used to regulate shipping, which could be applied to other sectors increasingly subject to globalisation. Shipping can be seen as a critical case in relation to effective global regulation considering the long-standing and sustained efforts to establish effective forms of global governance since the first decades of the 20\textsuperscript{th} century (Sampson and Bloor, 2007). If regulatory compliance in the shipping sector cannot be adequately secured it is unlikely to be secured elsewhere according to some authors (Sampson and Bloor, 2007).

2. Institutional landscape

The institutional landscape of international regulatory co-operation with regards to shipping has evolved over time. The original conception of the UN permanent body for shipping (the current IMO) just after the Second World War was largely based on implementation of international standards by flag states. The subsequent regulatory avoidance via the emergence of open registries, in which the relation between flag and nationality is very loose, has led to stronger role of port states, in addition to smart incentives for self-regulation, partly building on institutions that had existed for a long time, such as classification societies and P&I clubs.

\textit{a) International Maritime Organization}

The main international organisation regulating shipping is the International Maritime Organization (IMO), a specialized UN agency that has adopted approximately 60 conventions on maritime safety, security, pollution prevention and, liability for pollution damage, and training of seafarers. International regulation of commercial shipping generally touches on three issues: the way in which ships are built, vessel maintenance and the way in which vessels are operated. In a complementary role, the International Labour Organisation (ILO) has assumed responsibility for issues relating to the working and living conditions of seafarers, e.g. issues related to accommodation, food and employment rights. In 2006 the ILO amalgamated all of its conventions related to shipping into one overall convention, the Maritime Labour Convention, in order to improve transparency and easy understanding.

\textit{b) National maritime administrations}

The rules adopted by IMO and ILO are implemented by national maritime administrations. Member states must ratify or accede to the conventions and then take action to incorporate them into national law. States can also enforce their own distinctive national regulations. In the European Union, port states are also subject to EU shipping regulation, e.g. on sulphur content of marine fuel burnt in the port. All vessels must be registered with a national ship registry (“flag”) and they are subject to that nation’s shipping regulations where-ever the vessel is.

\textsuperscript{13} E.g. the environmental externalities of industrial activity attracted via lower environmental standards mainly impact the state’s territory

\textsuperscript{14} There are even ship registries in land-locked countries such as Bolivia.
Until the first half of the 20th century national shipping companies generally registered their vessels under their national flags and were thereby subject to national legislation. The second half of the 20th century saw a disintegration of shipping and nation-states: new flag states emerged and many shipping companies “flagged out” their ships to these open registries, in most cases developing countries with lower regulatory standards. Shipping companies and ship-owners had an incentive to do this to avoid national regulatory control and thus to save costs. The cost to ship-owners of maintaining the world merchant fleet to the minimum required shipping standards was in 2002 estimated to be approximately USD 4 billion per year; the competitive advantage gained by individual ship-owners not observing the international rules and standards could amount to 15% of the annual operating costs of a vessel (OECD 1996, OECD 2001). Developing countries had an incentive to develop these open registries as they provided considerable sources of income and possibilities to develop other offshore activities.15

Currently, 75% of the world’s merchant fleet tonnage is registered in open registries (UNCTAD, 2013). The three largest ship registries - Panama, Liberia and Marshall Islands - account for approximately 40% of total tonnage. Most of these open registries are relatively new and in most of these registries ship registrations come almost entirely from outside their borders. Although the worst commercial flags (within open registries) are no worse than the worst national flags, the best commercial flags are lagging behind the best national flags (Corres and Pallis, 2008).16 Open registries tend to have a consistently higher ship detention rate than the national registries (DeSombre, 2008).

The emergence of open registries has also given rise to “international” and “second” registries in the traditional maritime states. For example, Denmark, Germany, Norway, Portugal and Spain have all created international registries. These registries are held to the same international agreements that these states have adopted, but they generally relax crewing constraints and offer lower taxes and fees registration. In a similar vein, the UK, France and the Netherlands have opened “second registries” in their overseas territories, which also have relaxed crewing requirements. Home states always tend to have better records on labour protection than the international or second register (Winchester and Alderton, 2003).

In response to the “flagging out” of many shipping companies, various states have intensified the enforcement of international standards in their capacity as port states. Regardless of the vessel’s flag, nation states may enforce international maritime conventions on the ships that berth in their own ports based on IMO’s No More Favourable Treatment Principle, via tailored port state inspections, also referred to as Port State Control (PSC). Port state control is considered a major supplementary way of enforcing international shipping regulations. Enforcement by flag states and port states aims at implementation of the IMO standards by vessel crews. The authority for broad port state control comes from the United Convention of the Law of the Sea (UNCLOS). These port states came together via a series of regional agreements, Memorandums of Understanding (MOUs), determined to implement a common cross-national methodology on vessel inspection.

There are currently ten MOUs. These MOUs make no new laws pertaining ships and refer to existing international agreements on safety and environment. However, they create a systematised process of enforcing these existing international rules, which thus brings into being new obligations specifically for the port states that participate. In the MOUs, the port state authorities agree to inspect a certain percentage of ships that enter their ports during the course of the year, in general between 25% and 50%. The oldest

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15 In some cases states use ship registration as a loss leader to lure industries to their tax havens and other offshore activities. Offering both a tax haven and a ship registry can be attractive to shipping companies that can incorporate in the same location in which they register and thereby avoid taxes on all their business (DeSombre, 2006).

16 In addition: better performance of a flag is enhanced when the flag-state is actively involved in the works of the IMO. Being an IMO Council member improves performance further (Corres and Pallis, 2008)
MOU is the Paris MOU (Paris Memorandum of Understanding on Port State Control), which became operational in 1982, established by a group of European states and Canada, currently carrying out 24,000 ship inspections per year, representing 25% of the ships berthing in their ports. The IMO has actively promoted the effectiveness of port state control: its Assembly adopted in November 1991 a resolution calling for the establishment of regional Port State Control mechanisms, similar to the Paris MOU. Subsequently MOUs were adopted for Asia and the Pacific (Tokyo MOU), Latin America (Vina del Mar MOU), Caribbean, West and Central Africa, Black Sea, Mediterranean, Indian Ocean, Arab States of the Gulf and the US. As such, about half of the world fleet is now subject to port state control (Knapp and Franses, 2007).

c) Classification societies and P&I clubs

Enforcement of international standards is supported by the activities of classification societies. These are hired by ship-owners to inspect, certify and advise ship-owners to ensure that their ships meet standards mandated by flag states. Classification societies may also act on behalf of administration and may be authorised to perform functions of the administration (so called recognized organizations). The role of classification societies in many cases begins before a ship is constructed. Classification societies compete with each other based on cost and reputation. The ten most reputable classification societies (of a total or more than fifty in the world) have formed the International Association of Classification Societies (IACS), which collectively classes up to 92% of the ocean-going vessels as measured by tonnage. Another organisation of classification societies, the International Federation of Classification Societies (IFCS) is composed of an additional set of societies, though they are much less well known and less favourably regarded. Different societies have different standards they require in a ship; this allows for the possibility of “class hopping” to find a society that will class a ship that might otherwise not be accepted.

Classification societies are essential to ensure that ships are constructed in accordance with equipment requirements. One of the main advantages of equipment regulations is that they can be relatively easily implemented, unlike regulations that forbid pollution. This can be illustrated by the case of oil spills and pollution. Surveillance of oil pollution by ships has generally been very problematic with respect to detection, proof and prosecution. The IMO has thus increasingly focused on regulating ship design features (such as segregated ballast tanks and double hulls) that avoid or minimize the possibility of oil spills. A good functioning system of classification societies helps to enforce these equipment regulations. The value of reputation has become increasingly important as PSC processes have begun to issue detention statistics by classification society. Consequently, flag states that want to improve their records become more selective in their choice of classification societies. In this competitive process, classification societies take on stricter requirements and refuse to classify questionable ships or ships from disreputable flag states, in order to gain better PSC records. E.g. one of the IACS classification societies, Lloyd’s Register, decided in 2003 it would not class ships registered in Cambodia and Mongolia (DeSombre, 2006).

The protection and indemnity (P&I) insurance of ships provides an additional market disincentive for substandard ships. These P&I Clubs consist of groups of ship-owners insures itself by putting money into a collective fund from which each draws in case of an accident. Ship-owners within a P&I club have an incentive to admit only those to the club who do not pose a particularly high risk of accident or other liability, since the expenses of the club depend on keeping liability low (DeSombre, 2008). So, most club managers interview representatives of the ship-owner, find out the credit rating of the owner, and gather information from current club members. Many of the P&I clubs work together in an organisation called the International Group of P&I Clubs, which functions as a clearinghouse for information. If a ship-owner from one P&I club in the International Group applies to join a different club, the club it previously belonged to is obliged to tell the new club what the rates and performance of the ship were. Since nearly 90% if the new members in a club come from another club within the International Group, this policy can make it difficult to hide bad performance records by moving to a new club. Fees to P&I clubs are
differentiated according to the risk profile of the ship, but clubs are also reluctant to terminate the membership of those who are found to have high liability, because it could also happen to them (DeSombre, 2006). It has been estimated that around 5% of ships engaged in international shipping have no P&I insurance.

3. Evolution of the regulation of shipping

There is a relatively long history of international regulatory cooperation in shipping. Since the upsurge in international trade related to the industrial revolution in the 18th century, there have been international treaties related to shipping. The subjects covered included tonnage measurement, the prevention of collisions, signalling and others (IMO, 2014). By the end of the nineteenth century suggestions had even been made for the creation of a permanent international maritime body to deal with these and future measures. The plan was not put into effect, but international co-operation continued in the twentieth century, with the adoption of still more internationally-developed treaties. Nevertheless, it was not until after the Second World War and the establishment of the United Nations that the idea of setting up a permanent body for shipping materialised. The convention establishing this organisation was adopted on 6 March 1948 by the United Nations Maritime Conference. This convention entered into force on 17 March 1958 and the new organisation, then called Intergovernmental Maritime Consultative Organisation, was inaugurated on 6 January 1953. In 1982, the name changed into International Maritime Organization (IMO).

The scope of work of the IMO has grown gradually over the last decades, driven by developments in the industry and society. The sector has undergone drastic changes in ship types (containerisation), ship size, ship design speed, intensity of trade and the emergence of new trade routes and new maritime nations. Not surprisingly, institutional priorities have shifted over time, and some been response to major disasters. In the early years the IMO concentrated on developing international safety standards: the majority of conventions were adopted in this period, between 1969 and 1979. In the 1980s the attention shifted from standard setting to improving implementation of the conventions in particular by providing technical assistance to developing countries. From the 1990s the IMO developed a more pro-active and preventive approach, in contrast to earlier periods which were characterised as more reactive to disasters. This took for example the form of a more holistic approach to safety, which translated into more joint committee meetings. The last decade has seen the emergence of various new issues including environmental matter, including climate change, maritime security (terrorism and piracy) and ocean governance.

III. Main characteristics of regulatory cooperation

1. Governance arrangements and operational modalities

The main role of the IMO is “to encourage and facilitate the general adoption of the highest practicable standards in matters concerning maritime safety, efficiency of navigation and prevention and control of marine pollution from ships”, according to the Convention that established it17. These areas of interest have remained relatively stable over time, but new areas of work have been added to the coverage of the IMO, including maritime security, related to the emergence of piracy and risks of terrorism.

a) Membership and participation

The IMO is a specialized UN agency, controlled by its member states. The IMO currently has 170 member states and three associated members (Faroe, Hong Kong, China and Macao China). Together these

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17 The Convention of the International Maritime Organization, as corrected by the Resolution 371(x) of November 9, 1977
member states represented 97.16% of the world tonnage in 2012, according to the World Fleet Statistics of IHS Fairplay. The member states make up the main governing bodies of the IMO: the Assembly, the Council and its Committees.

b) Structure of the organisation

The Organization consists of an Assembly, a Council and five main Committees. The Assembly is the highest Governing Body of the Organization. It consists of all Member States and it meets once every two years in regular sessions, but may also meet in an extraordinary session if necessary. The Assembly is responsible for approving the work programme, voting the budget and determining the financial arrangements of the Organization. The Assembly also elects the Council. The Council is elected by the Assembly for two-year terms beginning after each regular session of the Assembly. The Council, consisting of 40 member states, is the Executive Organ of IMO and is responsible, under the Assembly, for supervising the work of the Organization. Between sessions of the Assembly the Council performs all the functions of the Assembly, except the function of making recommendations to Governments on maritime safety and pollution prevention which is reserved for the Assembly. Other functions of the Council include appointing the Secretary-General, subject to the approval of the Assembly.

The Assembly and the Council are assisted in their work by five main Committees:

- Maritime Safety Committee (MSC). The functions of the Maritime Safety Committee are to “consider any matter within the scope of the Organization concerned with aids to navigation, construction and equipment of vessels, manning from a safety standpoint, rules for the prevention of collisions, handling of dangerous cargoes, maritime safety procedures and requirements, hydrographic information, log-books and navigational records, marine casualty investigations, salvage and rescue and any other matters directly affecting maritime safety”.

- Marine Environment Protection Committee (MEPC). The MEPC focuses on the prevention and control of pollution from ships. In particular it is concerned with the adoption and amendment of conventions and other regulations and measures to ensure their enforcement. The MSC and MEPC are assisted in their work by seven sub-committees.

- The Legal Committee is empowered to deal with any legal matters within the scope of the Organization. It was established in 1967 as a subsidiary body to deal with legal questions which arose in the aftermath of the Torrey Canyon disaster.

- The Technical Co-operation Committee is required to consider any matter within the scope of the Organization concerned with the implementation of technical co-operation projects for which the Organization acts as the executing or co-operating agency and any other matters related to the Organization’s activities in the technical co-operation field.

- The Facilitation Committee focuses on eliminating unnecessary formalities and “red tape” in international shipping by implementing all aspects of the Convention on Facilitation of International Maritime Traffic 1965.

The IMO has a secretariat, headquartered in London, consisting of approximately 270 staff members, headed by a Secretary-General. The work of the IMO is driven by its member states and the functions of the secretariat are mainly restricted to advisory and technical work. The secretariat perceives itself as a neutral knowledge broker and discussion facilitator rather than a political actor (Campe, 2009)
An institutional trait of the IMO is that it has been observed that the member states’ representatives have a “business focus” and consist of individuals who are functionally linked to the maritime economy and who in most cases have had extensive experience and training in nautical sciences, with an Assembly that tends to select Council Members with direct links to the global shipping industry (Hinds, 2001). This is in turn mandated by the IMO Conventions as members of the Council should have specific shipping interests as well as ensure geographical spread.

c) Decision-making process

The rule making process at the IMO is an intergovernmental affair, yet interest groups that can have observer status with the IMO, participate in on-going discussions at the IMO. The main decision-making processes on the adoption of international conventions, the main regulatory instrument of the IMO. Each convention has its own voting rules, but the practice in negotiating these maritime conventions is to build consensus, in order to ensure sufficient compliance by member states.

d) Budget and dedicated staff

The budget of the IMO amounted to £29 million in 2013. The approved budgets for 2014 and 2015 are £32 and £33 million respectively; the IMO has a budgetary system in which the budget is discussed and approved for a period of two years (biennium). The IMO is financed via contributions from member states according to the size of its registered merchant fleet (in total gross tonnage), so it differs in this respect substantially from other UN organisations. This financing model implies that the largest contributors to the IMO budget are the world’s largest flag states, with Panama – which has the largest ship register - alone generating around one sixth of total IMO budget revenues in 2013.18

2. Forms of international regulatory cooperation

The main instruments of the IMO are its conventions. There are currently approximately 60 IMO conventions adopted, of which 49 conventions are in force; conventions enter into force after a sufficient number of member states has ratified these. Main conventions include the International Convention for the Safety of Life at Sea (SOLAS), the International Convention for the Prevention of Pollution from Ships (MARPOL) and the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (STCW). These main conventions have been adopted by almost all member states, so have a very broad global coverage.

Main conventions from the earlier years of the IMO attempted to solve issues such as safety at sea – via the International Convention for the Safety of Life at Sea – the facilitation of international maritime traffic and the regulation of the carriage of dangerous goods, load lines and calculation of the tonnage of ships. The 1967 Torrey Canyon disaster off the south coast of England - followed by other major tank disasters – resulted in stronger IMO involvement in the regulation of the environmental impact of shipping. IMO was given the task of establishing a system for providing compensation to those who had suffered financially as a result of pollution. Two treaties were adopted, in 1969 and 1971, which enabled victims of oil pollution to obtain compensation much more simply and quickly than had been possible before. Both treaties were amended in 1992, and again in 2000, to increase the limits of compensation payable to victims of pollution. A number of other legal conventions have been developed since, most of which concern liability and compensation issues.

18 Other large flag states include Liberia, Marshall Islands, United Kingdom, Hong Kong, Bahamas, Singapore, Malta, Greece, China and Japan.
The Torrey Canyon disaster led also to the International Convention for the Prevention of Pollution from Ships (MARPOL 73/78) and its Annexes. E.g. the regulations within the Annex IV concern discharge of liquid wastes within proximity to land, Annex VI regulates air pollution from ships, whereas other annexes deal with sewage, garbage and packaged goods. A key mechanism embedded within the MARPOL legislation is the creation of emission control areas (ECAs), maritime zones where stricter requirements are applied to the contents of bunker fuels in use. Thus, while sulphur is limited by the 2008 amendments to 3.5% of fuel globally from 2012, and to 0.5% from 2020, in ECAs, the limits are 1.0% and 0.1% respectively. ECAs are located in areas that contain high concentrations of both shipping activity and coastal populations, such as the Baltic Sea, the North Sea, North America and the Caribbean Sea. Other important conventions cover double hulls for tankers, anti-fouling systems and competence and associated certification of seafarers. Progress has been made on operational and technical measures to reduce GHG emissions such as CO$_2$ via measures such as the Energy Efficiency Design Index (EEDI) for all new ship constructions, and the Ship Energy Efficiency Management Plan (SEEMP) for existing ships.\footnote{The Marine Environment Protection Committee (MPEC) of the IMO amended MARPOL Annex VI in 2011, adding a new chapter on “Regulations on Energy Efficiency for Ships”. It includes two measures that came into force in early 2013 and apply to all vessels over 400 gross tonnage: the Energy Efficiency Design Index (EEDI) for all new ship constructions, and the Ship Energy Efficiency Management Plan (SEEMP) for existing ships. The EEDI phases in progressively stringent criteria into the building standards for different types and sizes of ship. Energy efficiency levels are measured in CO$_2$ emissions per capacity mile, and are designed to bear upon all production components of a given ship. The SEEMP constitutes a mechanism for benchmarking and improving operable ships, mainly through the Energy Efficiency Operator Indicator (EEOI) instrument. Under the SEEMP, owners and operators are periodically brought to review and upgrade their energy performance, focusing on such measures as engine tuning and monitoring, propeller upgrades, trim/draft improvement and enhanced hull coating.}

Global responses to maritime security challenges have been adopted in various domains, including the physical security of ships and ports, operational coordination at sea, the tracking of vessels, the integrity of container cargo and enhancing seafarer identity documentation. They include new measures by the IMO, particularly the International Ship and Port Facility Security (ISPS) Code, other amendments of the 1974 Safety of Life at Sea (SOLAS) Convention, such as the mandatory fitting of ship-borne Automatic Identification Systems (AIS) and amendments to the 1988 Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (SUA Convention and its Protocol covering offshore facilities (Bateman 2012).

3. Ensuring regulatory quality

a) Ex ante impact analysis

The instrument of ex-ante impact analyses of proposed IMO regulations is sometimes used. This is particularly the case for controversial and complex issues on which divergent views exist. There are various feasibility studies and impact assessments related to market-based mechanisms to reduce greenhouse gas emissions from shipping. Considering that IMO regulations have a huge impact on potential investment decisions in a highly capital-intensive sector, such studies are also used to show the probable effects of these regulations in order to increase legitimacy of proposals. E.g. an IMO-commissioned study has claimed that, the EEDI and SEEMP - under high uptake scenarios - should reduce global emissions below the status quo scenario by an average of 330 million tonnes (40%) annually by 2030, which would increase savings in the shipping industry by USD 310 billion annually (Lloyd’s Register, 2011).
b) Consultation

There is a wide range of organisations that have consultative states at the IMO. The consultative status gives the right to receive the agendas of meetings of IMO bodies and to submit documents on items of these agendas. It also gives the right to be represented by an observer at plenary meetings of the Assembly and, on invitation of the SG, at meetings of other bodies of the IMO. Finally, it gives the right to receive texts of resolutions adopted by the Assembly and, at the discretion of the SG, of recommendations made by other bodies of the IMO. To date there are 77 international non-governmental organizations in consultative status with IMO, including associations representing the different maritime industries, environmental interests and other organizations. Any organization seeking consultative status with IMO has to demonstrate considerable expertise as well as the capacity to contribute, within its field of competence, to the work of IMO. It must also show that it has no means of access to the work of IMO through other organizations already in consultative status and that it is "truly international" in its membership, namely that it has a range of members covering a broad geographical scope and, usually, more than one region. IMO may enter into agreements of co-operation with other intergovernmental organisations on matters of common interest with a view to ensuring maximum co-ordination in respect of such matters. To date there are 63 intergovernmental organizations which have signed agreements of co-operation with IMO, including the different port state control MOUs, and supra-national organisations such as the European Commission.

c) Monitoring implementation

Inspections

Port state control officers inspect vessels to check on compliance with international standards as laid down in IMO and ILO conventions which their home states have ratified. Inspectors may require deficiencies to be rectified. Serious deficiencies can lead to vessel detention, until the deficiencies have been addressed. The propensity for a ship to undergo inspection in a new port depends on its so-called Target Factor; the computation of this Target Factor is published, so that ship operators are able to take proactive steps to reduce their target factor and minimize their chances of inspection. An overall average detention rate (a three-year rolling average) for all inspected ships is calculated, and flag states whose ships exceed the average during that period are then identified as those that should be more frequently inspected. And inversely, vessels flying ‘quality’ flags will have a lower risk profile and thus be subject to fewer inspections. The results of such inspections are publicly accessible via internet. Port state control inspections, and detentions, cost money to operators. In the European Union repeated detentions may lead to the complete banning of a vessel from entering into all EU ports.

Port state control inspections are normally conducted in two phases. The first is based on a review of the certificates that give evidence of the characteristics of all elements of the ship and its crew and equipment. In most cases the date of issue and duration of validity are checked. The second phase is to verify the status of items and equipment, to ensure that it complies with the information contained in the certificates. This phase gives rise to reports, made on the basis of evidence of the performance and results of the inspection, to justify any corrections considered necessary (Rodriguez and Piniella, 2012). All ships are required to carry 17 documents and certifications, while particular categories of vessel (for example passenger ships, chemical tankers, gas carriers and high speed craft) are required to carry additional papers applicable to their category. The inspectors may ask for a demonstration of the fire drill or abandon ship drill, including the lowering and operating of the ship’s lifeboats (Bateman, 2012).

In order to increase effectiveness of port state control inspections, an administrative simplification reform is undergoing, labelled “New Inspection Regime” (NIR). This NIR is characterised by the use of more simplified criteria, the replacement of the existing target factor system by a risk based system and the aim to control 100% of the ships. The Paris MOU, that has applied the NIR since 2011, now applies seven
criteria to select vessels for inspection. The risk based mechanism has been designed to reward quality shipping with a reduced inspection burden, whereas ships considered to be high risk will be subject to more frequent in-depth inspections. Under NIR a vessel will be assigned a Ship Risk Profile which will classify it as a Low Risk Ship (LRS), a Standard Risk Ship (SRS) or a High Risk Ship (HRS). The Ship Risk Profile determines the inspection priority of the vessel, the time interval between inspections and their scope. The Tokyo MOU is in effect since 1 January 2014, which harmonises the PSC regimes of the Tokyo and Paris MOUs.

Also the maritime industry itself does a large amount of inspections. Inspections by classification societies cover the physical characteristics of a ship, coming from two main sources: international agreements generally overseen by the IMO (such as SOLAS, MARPOL, and the International Load Lines Convention) and rules created by the classification societies. Most P&I Clubs hire inspectors to inspect ships that are more than ten years old and refuse to insure passenger ships, oil tankers and bulk carriers that are not certified as complying with the IMO’s International Safety Management (ISM) code. Also industry associations regularly do inspections. E.g. the Oil Companies International Marine Forum (OCIMF), with membership of 90 companies, which has set up its own inspectorate, the Ship Inspection Report Programme (SIRE), which provides detailed vetting of vessels in the tanker trade. Such industry inspections are much more extensive than port state control inspections, especially those for oil tankers. It has been observed that these inspections can lead to substantial cost savings for the industry in terms of avoidance of casualties and pollution incidents (Knapp et al. 2011). General cargo ships do not have such an industry vetting inspection regime, which might explain why this is the worst performing ship type in terms of detentions and deficiencies found during port state controls (Knapp and Franses, 2007).

Certification

One of the key regulatory mechanisms within the IMO is the certification of seafarers, via accredited institutions. Only institutions offering training and assessments of sufficient quality should receive an IMO accreditation; only IMO-accredited institutions could provide seafarer certification. An IMO white list is in place since 2000 that consists of the countries where accredited maritime colleges and training centres (METs) meet high standards of teaching and learning in conjunction with guidelines of the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers. The aim of the white list is to avoid that seafarers from non-approved countries (countries not on the white list) would be employed by international ship operators. Ships employing seafarers from these ‘non-white list’ countries could be expected to be detained by port-state control officers, thereby incurring considerable costs.

Another form of certification exists with respect to labour standards. The ITF, a global labour union operating in 142 countries, has created a certificate that it gives to states that are in compliance with ILO standards on issues such as wages, holidays and working conditions. If a ship does not have an ITF certificate when it is in a port, it is given the opportunity at that point to accept the required standards; if this is not accepted the ITF can try to convince workers to refuse to service the ship or encourage a work boycott. This approach has been observed to have increased compliance to labour standards, as the costs of an ITF-sponsored boycott can be much larger than the cost of paying ITF-acceptable wage rates (DeSombre, 2008).

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20 These criteria include the type of ship, its age, flag, recognised organisation, company performance, and number of deficiencies and detentions recorded within the last 36 months.

21 Or rules mandated by the international organisation of classification societies to which it belongs.
Industry guidelines

The major industry actors have begun to work together to increase flag-state standards. E.g. the major organisations of ship-owners created the “Shipping Industry Guidelines on Flag State Performance” in 2003 which ranks flag states based on port state control records, use of recognised classification societies and ratification of international agreements. The idea is that this would encourage ship-owners to pressure the registry operators to improve their records and give them opportunity to choose registries that meet their needs for level of regulation.

Technical assistance

In addition, the IMO provides technical assistance and functions as a platform for Peer Review. It created a technical assistance programme in the 1960s that was expanded in the 1980s. Technical co-operation concentrates mainly on training, developing human resources in developing countries and improving the quality of seafarers. Examples of training programmes include: sensitivity mapping to identify which parts of a coastline are particularly vulnerable, training in oil spill response and contingency planning, and ballast water management issues. The IMO has five regional coordinators for technical co-operation activities, in Côte d'Ivoire, Ghana, Kenya, Philippines and Trinidad and Tobago. As part of the IMO technical assistance programme the World Maritime University was founded in Malmö (Sweden) in 1983. The IMO also has an important peer review function, via the Voluntary Audit Scheme, described in more detail in the sections below.

Peer reviews: the Voluntary Audit Scheme

The voluntary IMO Member State Audit Scheme, introduced in 2006, is designed to assess how effectively member states implement and enforce relevant IMO Convention standards. In the process, the audit scheme provides member states with feedback and advice on their current performance. As such the scheme could help to identify needs for technical assistance that could be provided by the IMO or its member states. The scheme, which draws on the Universal Safety Oversight Audit Programme of the International Civil Aviation Organization (ICAO), was proposed by nineteen member states, mostly traditional maritime states, as well as some of the largest flag states. The audit scheme is driven directly by the Council, contrary to other monitoring instruments that are more sectorally organised, characterised by Committees having the exclusivity to monitor compliance within the context of its assigned responsibility under a respective treaty (Barchue, 2006). The voluntary audit scheme was elaborated by a joint working group of several IMO Committees.

The audits are applied according to a uniform procedure, but the scope of the audit depends on how many of the ten IMO treaties covered by the Scheme that have been ratified by the State being audited. As part of the audit procedure a questionnaire is sent out that the audited state needs to answer and an audit mission takes place in the member states. This audit takes place in the timeframe of one week, and is carried out by a team of three auditors coming from IMO’s member states. This could be considered a contribution in kind by member states; in addition the costs for the audited state are approximately £11,000. The audit team consists of a team leader, an experienced auditor and a less experienced auditor; this composition is applied so that the auditor with the least experience can learn from the other members and become a team leader in the future. The IMO secretariat is not part of the audit team, but it provides an auditor’s manual, training courses for auditors and it checks the audit report. On average ten different voluntary audits have been carried out each year since 2006. The audited member states can choose to publicly release the audit report, or to keep it confidential. The IMO publishes a summary of the report for its member states in which the name of the audited state is not mentioned. Although the audit scheme is supposed to provide an overall assessment of the system, the themes covered in the audits differs per case,
depending on the specific challenges of that state. The scope of the audit is expressed in a Memorandum of Understanding between the Secretary-General of the IMO and the member state.

The IMO Assembly has agreed to make this scheme mandatory, likely to enter into force in 2016. This mandatory programme will replace the voluntary scheme, and increase the coverage of the audit scheme. The order of mandatory audits to be carried out will take into account the voluntary audits, so give priority to member states that have not been audited yet, so as to quickly achieve a set of comprehensive baseline data. The current objective is to have a complete cycle of audits completed within seven years, which implies that approximately 24 audits will be carried out per year. If the audits would continue to be carried out exclusively by representatives from member states, this would imply the need for 78 available auditors per year, which might be pushing the limits of feasibility. It is expected that discussions will emerge on more involvement of IMO staff within the audits (e.g. one of the three auditors from IMO secretariat) to relieve some of the pressure from member states, and at the same time promote uniformity of the different audits. This is likely to come up in the budget discussions for the 2016-2017 biennium. However, the idea of more involvement of IMO secretariat in peer reviews is not generally accepted, with a stream of thought stressing the neutrality of the secretariat which would be undermined if it were to assess member states’ performance.

d) Review of stocks: administrative simplification

The IMO is engaged in a process to reduce administrative burdens. This follows a resolution by the Assembly in November 2011 to adopt a process of periodic review of administrative requirements in mandatory instruments. Within that context an Ad Hoc Steering Group for Reducing Administrative Requirements (SG-RAR) was established in order to develop recommendations on how to alleviate administrative burdens created by IMO regulations. The aim is to review within five years all existing conventions and mandatory requirements, starting from 2012-2013. Some member states proposed a quantitative burden reduction target (e.g. a 25% reduction goal, in line with their national burden reduction programmes), but this suggestion was not retained (IMO, 2011). As part of the work of the SG-RAR an Inventory of Administrative Requirements in mandatory IMO instruments was conducted, which identified 560 administrative requirements, addressing a variety of stakeholders, including governments, IMO, manufacturers and equipment suppliers, maritime administrations, masters and ship’s crew, port authorities, recognised organisations, shipbuilders and repairers and shippers. In relation to this a public consultation process was launched in 2013, which generated 1,090 responses, which will be used when considering recommendations.

IV. Assessment of the impact of regulatory cooperation through the IMO

I. Benefits, costs and challenges of regulatory co-operation

There are various indications of positive impacts of the IMO regulations. Safety standards around the world are generally good and have improved considerably since the late 1970s, when IMO treaties began to enter into force and the number of acceptances rose to record levels. Oil spills from shipping have decreased significantly over the last 30 years. Ratification of key IMO conventions has led in many cases led to a decline in accident rates according to Knapp and Franses (2009): for every “milestone” convention that entered into force during recent decades, accident rates have gone down, according to the study. According to the US Environmental Protection Agency, the North American ECA should save more than 14 000 lives annually by 2020, and improve the respiratory health of some 5 million people in the United States and Canada. However, the evidence is fairly piecemeal; the IMO does not engage in ex post regulatory impact assessments. The extent to which IMO regulations can achieve positive impacts is dependent on the implementation for which the IMO is not responsible; so any impact assessment of IMO regulations needs to address the quality of implementation.
In general, standards tend to improve over time. Once a registry enters the world market with low levels of regulation, a variety of actors begin efforts to increase the standards followed by ships in those registries. This process has been aptly described by DeSombre (2008) as a “race to the regulatory middle”, with standards increasing upwards until they reach an equilibrium where open registries states require more environmental, safety and labour protections than they initially did, but fewer than adopted originally by most of the traditional registries. Such a tendency of open registries to develop into high quality standards is also visible within the IMO, where some of the largest flag states supported the creation of a mandatory IMO audit scheme.

Application of international conventions (via port state controls) has reduced the deficiencies of individual vessels. This can be concluded from a study on inspections by the Swedish Maritime Administration over 1996-2001, in which analysis of repeated inspections made clear that following a port state control inspection, the reported deficiencies during next inspection is reduced with 63% (Cariou et al. 2008). Similar positive results were found using data on 42,000 vessels/inspections carried out between 2002-2009 by 18 state members of the Indian Ocean MOU (Mejia et al 2010): there is a positive trend of improvement in the condition of vessels between two successive inspections, a finding that holds for the various types of vessels. The development of number of ship detentions over time also bears witness to the relative success to reduce sub-standard ships: ship detentions in the Paris MOU fell from 1699 vessels in 2001 (representing 9% of ship inspections) to 790 in 2010 (3% of inspections). Port state control has created an incentive for increased standards. Vessels registered in flag states with bad reputations have more probability to be inspected. Individual vessels would evidently prefer not to be detained, and flag states do not want to gain a reputation for requiring more than their fair inspections, especially since their attractiveness as a registry decreases with the inconvenience borne by vessels flying their flag (DeSombre, 2008). The proliferation of regional MOUs has significantly diminished the potential for sub-standard ships to call ports (Hare 1997). Moreover, port state control has accomplished the collection of baseline data on substandard ships in the region, increased enforcement of standards and led to closer regional cooperation resulting in more efficient employment of maritime safety enforcement resources (Payoyo, 1994). By working together in regional groupings, nations have been able to reduce the transaction costs of enforcement (Valencia, 1996).

2. Assessment of success

a) Comprehensiveness

Membership and coverage of conventions is very comprehensive. As mentioned before, the IMO currently has 170 member states which represented 97.16% of the world tonnage in 2012. These members have almost all ratified IMO’s main conventions: as of 31 January 2013 the coverage rate for the 1974 SOLAS Convention was 98.77%, for STCW 1978 98.8% for MARPOL 73/78 ranging between 89.65% and 99.20% (depending on which annex). Not only is the IMO very comprehensive in this respect, but it also seems to benefit from broad support by its member states, as illustrated by the large number of member states that pay their contributions in time.

The composition of the bodies of the IMO is generally representative of its members. The convention that created the IMO reflected the balance of power in shipping just after the Second World War, when shipping was dominated by a relatively small number of countries, nearly of them from the northern hemisphere; these countries tended to dominate the Council and the Committees, such as the MSC. The emergence of open shipping registries has radically changed the hierarchy of largest flag states, which is now reflected in the composition of IMO’s main bodies, after initial resistance by the traditional maritime
The IMO Committees now consist of all member states, whereas membership was restricted to a certain number of member states in the past, mostly from traditional maritime states. The number of Council members has been gradually increased (from 18 to 24, to 32 and finally to 40 members), in order to accommodate representing of new maritime states, mainly from developing countries. Since 2002, the Council consists of 40 member states, currently composed of ten with the largest interest in providing international shipping services, ten other states with the largest interest in international seaborne trade, and yet twenty other states which have special interests in maritime transport or navigation, and whose election to the Council will ensure the representation of all major geographic areas of the world.

b) Level of implementation

There have been attempts to reduce regulatory avoidance via “flagging out”, by underlining that there must be a “genuine link” between the state and the ship, as stated by the International Law Commission in the 1958 Geneva Convention on the High Seas. There has been a lot of discussion on what this genuine link should be, and it has become part of a UN convention, the 1986 UN Convention on the Conditions for Registration of Ships (UNCCORS), which requires of a registry that “a satisfactory part of its complement consisting of officers and crew of ships flying its flags be nationals or persons domiciled or lawfully in permanent residence of that state”. However, this convention has not entered into force and it is not expected that it ever will. Even the major maritime states that have complained about the emergence of open registries have not ratified UNCCORS, which might indicate that they benefit sufficiently from the open registry system that they do not want to work to undermine it entirely (DeSombre, 2006). As long as ships in significant numbers stay beyond the effective control and reach of their flag states, port state control will need to continue serving its vital complementary role, with a crucial role for port state control inspections. Other instruments treated below that could contribute to the level of implementation are certification and white lists; and peer reviews.

Quality and effectiveness of inspections

There is a large variation in the outcomes of port state control. Some countries (e.g. Russia) have shown extremely lenient inspection practices, compared to its neighbouring countries, resulting in very

22 In the convention that created the IMO, membership of the Maritime Safety Commission (MSC) was allocated by designating eight of the fourteen positions to representatives of the eight largest ship-owning nations. By the time the agreement entered into force in 1959, the growth in open registry shipping meant that Liberia and Panama were among the eight largest registries, and these states attempted to claim their place on the MSC. Their bid was opposed by the traditional maritime states, and neither was elected to the commission. The dispute was eventually decided by the International Court of Justice the following year in favour of Liberia and Panama. Subsequently, the MSC was expanded to 16 members by the 1965 Amendments and then to the entire IMO membership by the 1974 amendments.

23 China, Greece, Italy, Japan, Norway, Panama, Republic of Korea, Russian Federation, United Kingdom, United States.

24 Argentina, Bangladesh, Brazil, Canada, France, Germany, India, Netherlands, Spain, Sweden.

25 Australia, Bahamas, Belgium, Chile, Cyprus, Denmark, Indonesia, Jamaica, Kenya, Liberia, Malaysia, Malta, Mexico, Morocco, Peru, Philippines, Singapore, South Africa, Thailand, Turkey.

26 The likely price for the willingness of the most powerful states not to undermine the open registry system seems to be a reduced degree of sovereignty. An example of this is Effective US Controlled (EUSC) fleet that applies to some open registries, which refers to ships majority-owned by US citizens and registered in these locations that may be called into service by the US government in case of war or national emergency. As such ship-owners may assume they will enjoy greater US protection should the need arise. EUSC-provisions apply to some of the largest open ship registries, including Panama, Liberia, the Bahamas, Honduras and the Marshall Islands (DeSombre, 2006).
high rates of inspections in which no deficiencies were found (Knudsen and Hassler, 2011). There is also a wide variation in global practice between the regional MOU-regimes, based on the probability of detention (Knapp and Franses, 2007). Moreover, there are no indications that detentions or deficiency indicators in the MOU regimes are correlated to accident proneness (Knapp, 2007), which might be related to the fact that the origin of most casualties is due to human factors and that it is very difficult, during an inspection on-board a vessel anchored in a port, to check and detect all the human aspects which may lead to a casualty (Degré, 2008). In addition, Inspectorates in some countries do not have access to electronic databases, and are therefore not able to target ships for inspection on the basis of the previous inspection record, whereas in other countries (such as in West Africa) port state control is reportedly used as a pretext for local extortion (Bloor et al., 2006). UK inspectors were less likely to pick up sub-standard ships berthing at weekends or in smaller ports. The different MOU regimes do not take inspections of each other into consideration.

These inconsistencies can be explained by the discretionary nature of port state controls. Many MOU-procedures are in practice explicitly “discretionary”. Discretionary systems have great advantages in the effective targeting of scarce resources and the avoidance of burdensome routines, but it can also lead to widespread inconsistencies (Bloor et al. 2006). Research shows that the same ships fared very differently under different port state control officers (PSCOs), with large differences in focus, thoroughness and effectiveness. These will only be more stringent when shortage of time in combination with complex regulations may result in incomplete inspections. In addition, there are substantial cross-national differences in inspection practice. The strongest effect of a port state control inspection in decreasing the probability of casualty can be found in the South American Region, the Indian Ocean Region and in Australia; not in the European or North American region (Knapp and Franses, 2008). However, these are regions where in general the implementation capacity is lowest. There is a lack of capacity in many developing countries to establish an effective national maritime administration and provide the necessary highly-skilled PSC inspectors, as well as the lack of resources in the IMO to monitor the effectiveness of the PSC regimes (Bateman, 2012). The ironic consequence of the effectiveness of the Paris and Tokyo MOUs and the US Coast Guard is that they tend to drive sub-standard ships away to operate in regions where the implementation capacity is lowest and where they are more likely to be exposed to pirate or terrorist attack or to be used for illegal purposes (Bateman, 2012).

The relevance of the factors to consider in selecting or targeting a vessel for inspection is crucial to ensuring the continued effectiveness of the port state control regime. The main factors that were found to be relevant to explain deficiencies noted during PSC inspections were the age of vessel at inspection, the type of vessel, and the flag of registry (Cariou et al. 2007); these elements are consistent with those considered in PSC targeting protocols used around the world. E.g. they are an integral part of the formula for calculating a ship’s target factor under the Paris MOU (as well as the risk assessment in its New Inspection Regime) and the boarding priority matrix of the US Coast Guard (Cariou et al. 2007). Despite the seemingly adequate factors for targeting vessels, analysis of all the ships that were involved in serious accidents or incidents over 1967-2011 and their characteristics, suggests that the New Inspection Regime of the Paris MOU would have rated as Standard Risk Ships 90% of all the ships involved in the most serious accidents (Rodriguez and Piniella, 2012). This discrepancy can be explained by the fact that approximately 80% of the shipping accidents are related to human errors that are very difficult to predict and target.

In addition, there is a lack of coordination amongst port state control regimes and industry inspections. Due to the lack of coordination and trust, a ship might be inspected in several regimes during a relatively short time period where the benefit of an inspection can be easily saturated. By ignoring an inspection that was performed in one of the other regimes, it is more likely that a good ship is selected for inspection, while a substandard ship could benefit more from the inspection. There might also be a lack of
rectification of deficiencies since deficiency data is not shared amongst port state control regimes and taken into consideration when targeting a vessel (Knapp and Franses, 2008).

Certain regulations, e.g. on the use of low-sulphur fuel, are not frequently monitored. Very few inspections involve sampling and testing fuel samples. In many cases, inspectors rely upon the Bunker Fuel Delivery Note (BDN) and the Chief Engineer’s Oil Record Book; both of these documents are normally handwritten, not always written in English, as a carbon copy frequently illegible, so in many cases vulnerable to forgery and fraud (Bloor et al. 2013). Sweden, Germany, the Netherlands and Denmark are some of the few maritime administrations routinely collecting and analysing fuel samples, even if the total number of samples they collect is relatively small. Most other European authorities, including UK and France, do not take such samples; the chances of a vessel in a European port having the sulphur content of its fuel tested are very small. Despite this limited number of inspections, the rates of non-compliance were relatively small (4% in the case of Sweden; 15% in the case of Rotterdam)\(^2\), most likely by a misapprehension (overestimation) of the ship crew of the likelihood of detention (Bloor et al. 2013).

These inconsistencies undermine the possibility of smart regulation. They might have resulted in detentions of quality ships and in clean inspection reports for sub-standard ships. As such, they seem to have undermined the confidence of the industry in the accurateness of the system. If operators, charterers and other industry stakeholders believe that port state detentions are arbitrary and capricious, then they are less likely to factor ship detention records into their commercial decisions (Bloor et al., 2006).

Certifications and white lists

The white list of approved nations for seafarers should ensure well-trained seafarers, but some industry stakeholders are critical of its effectiveness. The philosophy behind the white list is that only institutions offering training and assessments of sufficient quality receive accreditation; it is these accredited institutions that can provide seafarer certification. In practice, there are various challenges: enforcement of international regulatory standards on training for seafarers lies with the government authorities of the new labour supply countries, most of which are developing or middle-income countries. Some of these countries simply lack the skilled personnel and resources to effectively examine the enormous number of trained needed to maintain the million-strong labour pool required to crew the international merchant fleet (Bloor et al. 2013). Maritime colleges and training centres (METs) in ‘white list’-countries should meet high standards of teaching and learning in conjunction with the guidelines, but data suggest that they often fail to do so (Sampson and Bloor, 2007). It is also reported that regulators find it difficult to obtain all the documentation required from those subject to regulation; it is suggested that in these circumstances regulators frequently relax their rules to accommodate deficiencies. In addition: there are cases of certificate fraud, which has led to a widespread lack of legitimacy in the certification of lower-level mariner competency (Knudsen and Hassler, 2011). As a result, some employers have been observed to operate their own corporate ‘white lists’ that they consider more reliable than the official IMO ‘white lists’. Moreover, many ship operators – dissatisfied with the quality of potential recruits – find themselves having to expend time and resources to screen suitable recruits because they have lost faith in licenses as evidence of training quality.

The system of self-regulation via white lists is arguably also ineffective because it is not backed up by feasible sanctions. In the case of seafarer certification, the only big sanction available to the IMO is the deletion of a labour supply country from the IMO white list, but this cannot realistically be deployed, as some of the labour supply could be considered “too big to fail”: they provide simply too much of the world’s seafarers. Nine nations together supply two thirds of the seafarers in the merchant fleet: the

\(^2\) Moreover, the non-compliance was in the majority of cases likely caused by poor fuel changeover practices rather than deliberate non-compliance (Bloor et al. 2013).
Philippines, Russia, Ukraine, China, India, Poland, Indonesia, Turkey and Myanmar (Wu and Sampson, 2004). There was also a perception amongst stakeholders that it would be impossible to exclude certain nations from the ‘white list’, because of their critical importance for the international supply of seafarers. This was particularly the case of the Philippines, included on the ‘white list’ despite widespread dissatisfaction in the shipping sector with the standards in many maritime colleges and the integrity of the maritime administration in the Philippines.

Peer reviews

The audit scheme has worked as a catalyst for rule enforcement and resource mobilisation in member states. As the scheme aims to provide a comprehensive systemic assessment, the different steps of the process (questionnaire, the visit) facilitate a dialogue between different stakeholders that otherwise might not have taken place. The decision of a member states to apply for an audit, secures the involvement of political representatives (e.g. a minister) that can help to get maritime issues on the political agenda of the country. As such, the audit reports have in many countries facilitated speedier approval of IMO conventions and amendments, as well as more resources for national maritime administrations and instruments for enforcing maritime conventions. Until now, 79 member states, representing over 90% of world tonnage, have volunteered to have their system audited, resulting in approximately ten audits per year. This bears evidence to the perceived usefulness of the instrument by member states. As mentioned above, the audit scheme is a pure peer-to-peer review, with the audits carried out by representatives of other member states. The fact that the system has been able to run in this way, bears testimony to the large implication of member states to the instrument of audit schemes and to peer-to-peer learning in general.

The audit instrument has not been designed to encourage “naming and shaming”, even if it could potentially be used in that way. Already now there is some peer pressure to publish audit reports; and approximately ten of these reports are now publicly available. The summaries of the mandatory audit schemes will be made public, and will be no longer anonymous as is currently the case with voluntary audit schemes. The mandatory audit scheme might thus gradually evolve into a benchmarking scheme, in which systems performance of one member states could be compared with those of others. However, this is a delicate balance, as the evolution into a benchmarking system might undermine the willingness of member states to participate in the system, so disclosure should not compromise the credibility of the scheme and its perceived possibility to devise appropriate assistance.

c) Factors of success

Ingenious institutional architecture

For the implementation of its standards, the IMO is dependent on its member states, which can legislate to force private actors to follow the rules. It is the interplay of these actors with their various incentives that gives the institutional architecture of shipping regulation its ingenious nature. The role of national states is described below along the lines of their responsibility as flag states and port states. Their enforcement is facilitated by a constellation of private actors (classification societies, P&I Clubs, industry organisations and trade unions) that provide incentives for shipping companies, ship-owners, operators and vessel crews to adhere to international standards.

Strong industry support

The IMO benefits from strong support from maritime industry actors. This can be explained by the extensive consultations with the industry and other relevant actors, the composition of main IMO bodies (including the secretariat) with representatives having a shipping background, which ensures concrete and
practical approaches that have a fair chance of being implemented by national maritime administrations and the industry.

Capacity to reach consensus

The IMO generally aims to achieve consensus on new activities or amendments of existing conventions, even if the voting rules of some conventions would not require this. Although this search for consensus arguably increases transaction costs, it could also be considered to increase general acceptance of the standard, increase the willingness to implement it and in this way lower compliance costs. A consequence of the search for unanimity is deadlocks in some areas, in particular the application of market-based mechanisms to reduce CO₂ emissions from ships, a case that will be elaborated below in the section on overlapping jurisdictions.

Relatively quick procedures

Over the last decades, various mechanisms have been introduced that have sped up decision making and adoption of the IMO conventions. These measures include the method of tacit acceptance and of the accelerated amendment procedure that have improved IMOs ability to amend and modify legislation:

- **Tacit acceptance.** Instead of requiring that an amendment shall enter into force after being accepted by, for example, two thirds of the Parties (“explicit acceptance”), the “tacit acceptance” procedure provides that an amendment shall enter into force on a set date unless they are specifically rejected by a specified number of countries. As amendments are nearly always adopted unanimously, very few rejections have ever been received and the entry into force period has been steadily reduced, in some cases to just one year after being adopted. In addition the tacit acceptance has increased the transparency and predictability of entry into force, in contrast with the “explicit acceptance” system where entry in force is determined by the timing of the ratification of a certain number of countries. Tacit acceptance is now incorporated into most of IMO's technical Conventions.

- **Accelerated amendment procedure.** A resolution adopted in 1994 makes provision for an accelerated amendment procedure to be used in exceptional circumstances - allowing for the length of time from communication of amendments to deemed acceptance to be cut from 18 months to six months in exceptional circumstances.

According to some observers there is an overload of instruments, with risks of crowding, missing rule application and inconsistent rule application. Some conventions overlap, amendments often do not apply retrospectively making it difficult to determine the complete and exact rage of regulations and recommendations that apply to specific situations and ship types at any given time (OECD, 1996). Whereas the tacit amendment procedure has shortened the time between adoption and entry into force, the currently ongoing exercise to reduce administrative burdens could help to rationalise the existing stock of instruments. The widely supported aim to apply this instrument on a periodic basis guarantees that the rationalisation is not a one off-exercise, but that streamlining of the body of regulations will be a continuous process.

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28 E.g., in the case of the 1974 SOLAS Convention, an amendment to most of the Annexes (which constitute the technical parts of the Convention) is "deemed to have been accepted at the end of two years from the date on which it is communicated to Contracting Governments..." unless the amendment is objected to by more than one third of Contracting Governments, or Contracting Governments owning not less than 50 per cent of the world's gross merchant tonnage. This period may be varied by the Maritime Safety Committee with a minimum limit of one year.
Capacity to adapt to new developments

Openness to change has become a basic characteristic of the IMO; it eagerly takes up new challenges. This can be illustrated by the large number of conventions and successive amendments to the original conventions. In its desire to be proactive and responsive, IMO maintains a high output of new decisions with relatively limited attention to implementation issues. Examples of this include the adoption of ballast water treatment regulation without approved equipment available (Roe, 2013) and the reduction of emission caps in ECA’s without clear industry consensus on the most appropriate way to achieve this (fuel switch, LNG, or scrubbers). The tacit acceptance procedure of the IMO facilitates quick decision-making, so new developments can be quickly adopted. According to some observers, the IMO is too adaptive, which creates an overload of new regulations (Knudsen and Hassler, 2011). Although this tendency might exist – in the same way as it exists for all standard setting organisations that want to remain relevant and adapt to new circumstances – various mechanisms have been put in place to counterbalance an overload of regulation, including the on-going stocktaking of administrative burdens and the emphasis of the Secretary-General on implementation of existing regulation. At the same it is clear that various IMO conventions on essential issues, such as ballast water and ship recycling, have not entered into force because signatories fall short of the ratification threshold, which presents gaps in international regulation.

Coordination in case of overlapping jurisdictions

There are overlaps between international organisations with respect to marine policies in a broad sense, where jurisdictions of different UN agencies are related, but where coordination has increasingly been taking place. The wider global marine policy making is split between three different specialised agencies (IMO, FAO and UNESCO/IOC) and the UNEP programme that each have their sectoral focus (shipping, fisheries, oceanography and the environment) and each headquartered in a different city (London, Rome, Paris and Nairobi). This is due to the design of UN specialised agencies as sectoral agencies, with headquarters in different places, which makes inter-agency coordination challenging (Hinds, 2001). However, cooperation has emerged in the form of the incorporation of specific policy input provided by IMO organs within decisions of other UN bodies, e.g. input concerning IUU fishing and related matter (FAO), seafarer issues (ILO), management of regional pollution response centres (UNEP). In addition, there are joint working groups established with FAO, ILO, UNESCO/IOC and UNEP concerning marine issues and there is a number of partnerships on regulatory and technical cooperation (FAO), regulatory cooperation (ILO) and technical cooperation (UNEP).29

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29 One of the counter-examples – illustrating a problematic side of the jurisdictional overlap - relates to the overlap with the United Nations Framework Convention on Climate Change (UNFCCC) on greenhouse gas (GHG) emissions from shipping. Although GHG emissions from international shipping are recognised in Article 2.2 of the Kyoto protocol, which establishes a formal link to the IMO by recognising the role of the IMO in limiting and reducing GHG emissions from international shipping, GHG emissions from shipping are currently not part of national inventories under the Kyoto Protocol and therefore not subject to binding emission reduction targets agreed in the Kyoto protocol. IMO has adopted technical standards for new ships to curb emissions from shipping, but have not been able to agree on market-based mechanisms to reduce GHG emissions from shipping, similar to the mechanisms introduced in the Kyoto protocol. The reason why no compromise has been found on shipping emissions is the conflicting regulatory philosophies of the IMO and UNFCCC: One of the major IMO principles is commonly referred to as “no more favourable treatment” or “equal or non-discriminatory regulation of all ships in international trade irrespective of flag and ownership can be applied to all vessels, regardless of their flags” (IMO, 2009). This principle is implemented by giving enforcement power to both flag states and port states, so as to ensure that all ships, regardless of their flags, will have to abide by its conventions. Instead, the UNFCCC climate regime is based on the principles of “common but differentiated responsibilities and respective capabilities” (UNFCCC, 1992). No consensus could be reached on the underlying principles, as some countries (mainly industrialised countries) prefer to apply IMO principles whereas other countries (mostly
Despite overlap between IMO and supra-national organisations such as the EU, the two organisations are mostly complementary. The overlap with the EU is most intense because the European Commission has the most extensive range of responsibilities of all regional supra-national organisations. The EU has its own maritime policy, its own specialised agency (the European Maritime Safety Agency) and other policy objectives (e.g. on climate change) that have interfered with IMO mandates. This has led to some conflict in the last decade. Roe (2013) mentions how the European Commission has tried to push for a separate seat for the EU at the IMO, against the will of member states. The European Commission has also attempted to provoke a breakthrough on market-based mechanisms to reduce GHG emissions from shipping at the IMO-level by setting a deadline after which it would introduce its own scheme, e.g. by introducing shipping into the EU-Emissions Trading Scheme. Despite these overlaps, working relations between the two organisations have generally been good. E.g. cooperation between IMO and EU has worked well on piracy, because IMO has global coverage and EU has the funds to implement necessary measures. Also the approach to policy-making is complementary. It has been observed that the IMO, due to its decision-making processes – based on negotiations between national officials of member states with close connections to the maritime sector – has regulations that are more in tune with national policies, than those of the EU standards (Gulbrandsen, 2013). Moreover, the IMO has important peer review capacities that the EU lacks.

Overlap with national regulations is inevitable and generally not problematic. There are various instances of national regulations anticipating or overriding IMO regulations. Following the disaster of the Erika single-hull oil tanker in 1999, France and Spain unilaterally introduced legislation on double hulled tankers in anticipation of IMO proposals. In response to the 2003 voluntary ship scrapping policies of the IMO that were perceived by some as inadequate, Denmark and the Netherlands stopped the export of scrap vessels to India, and the United Kingdom decided that all the government-owned ships would be scrapped within the OECD (Roe, 2013). Also sub-national regulations could anticipate IMO rules; e.g. the State of California has ship emission laws that go beyond IMO regulations. The consensus-driven approach of the IMO has to a large extent guaranteed enforcement of the adopted conventions. Considering the global character of shipping, global rules generally make sense, but this evidently cannot preclude nations from defining stricter rules to prevent general interests. Global standard setting becomes more challenging if it has to reconcile existing national rules; the IMO could be used as a platform to make sure that the regulation of various nations in anticipation of international rules is somehow harmonised or following similar approaches.

V. Conclusion

Shipping is a unique test case for international regulatory cooperation, considering its global reach, impact and potential for free-riding behaviour. Regulatory avoidance in shipping was pursued, and the emergence of open shipping registries (and the simultaneous decline of national registries) illustrates the tendencies of a global industry to relocate to places with lower regulatory standards or more advantageous commercial conditions. Although port state control has counterbalanced these tendencies, it is itself also to some extent subject to regulatory avoidance, with substandard ships increasingly being deployed in zones with limited port state control implementation capacity.

developing countries) prefer UNFCCC principles as leading. The first set of countries fears that not addressing shipping emissions on the basis of “no more favourable treatment” would create loopholes for vessels to circumvent with any international regulation, where the second group of countries considers that such policies would impose an additional burden on the development path of developing countries, so these plea for recognition of the specific needs and special circumstances of the developing countries. According to Hackman (2012), a compromise should be possible between the two value systems, using market-based mechanisms, using a fair and appropriate share of the revenues of such instruments to assist developing countries in addressing climate change.
Overall, international regulatory cooperation in shipping can be considered a relative success story. Thanks to the adoption and enforcement of IMO conventions, shipping has become safer and less polluting. Main conventions have comprehensive coverage and appear to be fairly well enforced, depending on geographical zone. The IMO as a global regulatory system and standard-setting authority for the globalized shipping industry has large credibility and legitimacy in the maritime sector, also thanks to its application of various regulatory instruments, including consultation, peer reviews, ex ante impact studies and administrative burden reduction. The IMO has large membership that is well represented in its main bodies, considered to be efficient, professional and adaptive, also thanks to mechanisms such as the tacit acceptance procedure that have shortened internal procedures. This success can be explained by an ingenuous interplay of public and private incentives as well as shared responsibilities of flag states, port states, training institutions and classification societies. Substandard ships are more likely to be subject to port state controls, also because substandard ships will not be classed by reputable classification societies and will have to pay higher insurance fees for protection and indemnity (P&I). This mix of public-private incentives has also contributed to higher regulatory standards by the largest open registries, with their competitiveness depending on improving their regulatory performance and reputation.

Nevertheless, there are remaining challenges to resolve. The IMO faces this challenges with new mechanisms of performance control and the strengthening of technical cooperation activities. Alongside, the already mentioned member states audit scheme that has worked to increase rule enforcement and resource mobilisation in member states and which will become mandatory in 2016 will further improve this their benefit, the IMO is implementing a goal based standards audit.

Goal-based ship construction standards were introduced in IMO suggesting that IMO should play a larger role in determining the standards to which new ships are built, traditionally the responsibility of classification societies and shipyards. IMO goal-based standards are broad, over-arching safety, environmental and/or security standards that ships are required to meet during their lifecycle irrespective of ship design and technology, and specific enough in order not to be open to differing interpretations. The aim of these ship construction standards is to permit innovative designs but at the same time ensure that ships are constructed in such a manner that, if properly maintained, they could remain safe for their economic life.

The verification of the conformity with goal-based ship construction standards for bulk carriers and oil tankers, the GBS Guidelines of individual recognized organizations and/or national maritime administrations with the GBS, will be carried out by international GBS Audit Teams established by IMO. These Guidelines foresee that recognized organizations and/or national maritime administrations submit requests for verification of their ship construction rules to the Secretariat that will forward these requests to the Audit Teams to be established for a verification of the submitted information through an independent review. The final reports of the Teams with relevant recommendations will then be forwarded to the MSC for consideration and approval. By the end of 2013, 12 International Association of Classification Societies (IACS) members (recognized organizations: ROs) and one non-IACS RO submitted requests for GBS verification audits and commenced the GBS verification process, in accordance with the GBS Guidelines.

In order to better assist developing countries, the Secretariat is adopting a more targeted approach when planning technical co-operation activities, making such an approach more closely aligned to the real needs of developing countries. These needs should be the priorities of the ITCP rather than the thematic areas identified by technical committees. The implementation of country maritime profiles (CMP), based on defined capacity-building needs, provides a useful tool for ensuring effective delivery of the ITCP. The proposed country maritime profile has two main aspects, the creation of an interactive mechanism of cooperation between the Secretariat and Member States aimed at identifying the real needs of the countries concerned and a database of the country profiles, which would complement the gathering of information and be linked to the outcomes of the Member State audits. It is expected that Member States play a key
role by providing information and feedback in the process of developing country profiles. In this regard, more needs assessment missions might also be fielded to those developing countries where there is insufficient or out-of-date information. Additionally, it is expected that the information gathered from the country maritime profiles will provide an opportunity for the development of maritime clusters in developing countries, and provide the opportunity for the formulation of national maritime transport strategies and policies in order to ensure sustainable maritime development.

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