

## *Assessment and recommendations*

Recent developments highlighted in (OECD, 2017<sup>[1]</sup>) show Mexico as a reform frontrunner. Mexico has put together the most ambitious reform package of any OECD country in recent times through the unprecedented *Pacto por México*. These structural reforms have spanned a wide range of sectors and policy areas. They have been important steps forward, but still have to translate into tangible outcomes. Looking ahead, Mexico needs to ensure that the country can reap the benefits from these unprecedented reform efforts. This will involve effective reform implementation and great conjunction / alignment across reform efforts.

In this context, international regulatory co-operation (IRC) represents an important opportunity to support the regulatory, competition and more broadly the economic and governance reforms undertaken to strengthen market efficiency and policy effectiveness domestically. Through regulatory co-operation, countries, and in particular domestic regulators, can better understand and take into account the impacts of their regulatory action including beyond their domestic borders. They can collect and build on the knowledge that other jurisdictions have accumulated on similar issues. IRC provides them the opportunity to develop concerted approaches that can reinforce the effectiveness of their individual measures, support better enforcement and limit regulatory arbitrage, and address undue regulatory divergences that can be costly for citizens and businesses. IRC can in sum help regulators overcome the inherent domestic nature of the development and application of laws and regulations in a context of increasing internationalisation of flows of goods, services, capital and people and growing inter-dependency between countries.

IRC is particularly important for a country, such as Mexico, which is strongly embedded in international economic relations. Mexico's trade contributes to more than a third of its GDP, most of it directed at the US and the EU. It is no surprise that today's NAFTA and other trade negotiations focus strongly on non-tariff, regulatory barriers. Because of its geographic location, the country is deeply embedded in North America's relations and a highly influential actor in the Latin American Region with which it shares a common language. Over the years, Mexico has also increased its international presence, as illustrated by the signature of the GATT agreement in 1986, followed by the adherence to the OECD in 1994 and to the World Trade Organisation in 1995. Today the country is an active player in many international *fora*, and a party to a multiplicity of international agreements and frameworks for co-operation. And yet, as in all countries, globalisation has not yet fully permeated the everyday work of regulators.

This review aims to help Mexican regulators develop state of the art regulations that are up to date for the global player that Mexico has become, ultimately allowing Mexico to boost foreign trade and reap the benefits of globalisation for its population.

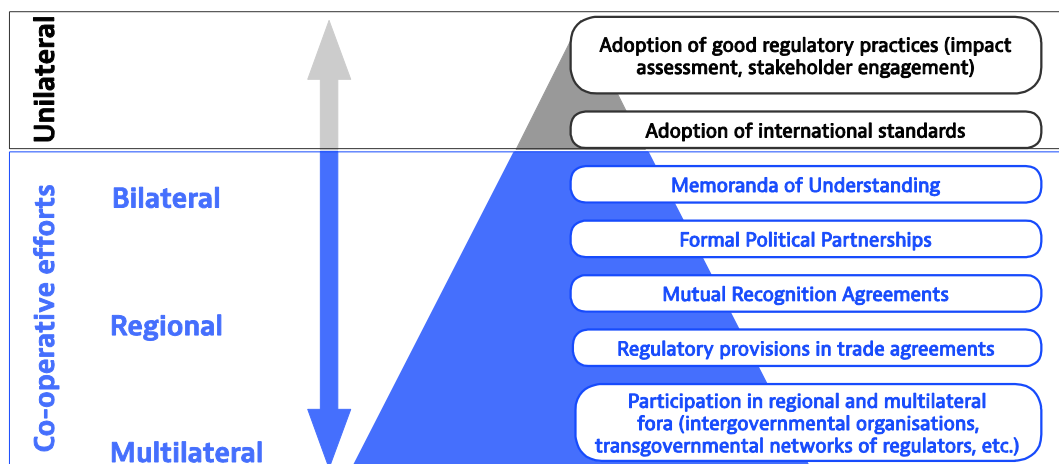
## What is international regulatory co-operation (IRC)?

The 2012 Recommendation (OECD, 2012<sub>[2]</sub>) recognises that in today’s globalised context, regulators can no longer work in isolation. They have much to learn from their peers abroad, and much to benefit from aligning approaches with them. IRC has become an essential building block to ensure the quality and relevance of regulations today. Principle 12 of the 2012 Recommendation therefore encourages regulators to:

*“In developing regulatory measures, give consideration to all relevant international standards and frameworks for co-operation in the same field and, where appropriate, their likely effects on parties outside the jurisdiction” (OECD, 2012<sub>[2]</sub>).*

Building on the Recommendation, (OECD, 2013<sub>[3]</sub>) defines IRC as any agreement or institutional arrangement, formal or informal, between countries to promote some form of coherence in the design, monitoring, enforcement or *ex post* evaluation of regulation. (OECD, 2013<sub>[4]</sub>) also highlights the different ways in which a country may approach regulatory co-operation. They range from the unilateral adoption of good regulatory practices that promote evidence-based rule-making to various co-operative approaches (bilateral, regional or multilateral) that provide for the development of common regulatory positions and instruments with other countries (Figure 1). Examples of the selected approaches and their related benefits are listed in Box 1.

**Figure 1. The variety of IRC approaches**



*Note:* unilateral approaches are pictured in grey, and collaborative approaches, ranging from bilateral to multilateral are pictured in blue.

*Source:* Based on (OECD, 2013<sub>[3]</sub>), *International Regulatory Co-operation: Addressing Global Challenges*, OECD Publishing, Paris, <http://dx.doi.org/10.1787/9789264200463-en>.

This report documents and assesses the main IRC policies and practices in Mexico, using the range of possible IRC approaches to structure the analysis. The two main axes of the analysis are: 1) the unilateral efforts undertaken by Mexico to support regulatory coherence through good regulatory practices, namely regulatory impact assessment (RIA), stakeholder engagement, and the adoption of international standards; and 2) Mexico's co-operative efforts on regulatory matters, bilaterally, regionally or multilaterally, through memoranda of understanding (MoU), the High Level Regulatory Cooperation Council with the United States, mutual recognition agreements, trade agreements, and/or participation in international *fora*.

### **Box 1. IRC in practice: examples of approaches and related benefits**

Several countries have telling examples of IRC practices that have helped them make efficiency gains while achieving their public policy objective.

#### **Adoption of international standards on motorcycle regulation can help protect safety while saving millions of dollars**

On 15 September 2014, the Australian Government removed the requirement to modify rear mudguards on new motorcycles to meet unique Australian Design Rules, which imposed a requirement above the commonly accepted international rules. Abolishing this provision meant nearly 70 000 new motorcycles per annum would no longer be required to be retro-fitted with rear mudguard extensions. This is estimated to reduce regulatory burdens by AUD 14.4 million.

Source: [http://minister.infrastructure.gov.au/jb/releases/2014/September/jb096\\_2014.aspx](http://minister.infrastructure.gov.au/jb/releases/2014/September/jb096_2014.aspx).

#### **Participation in regional organisation helped improving water quality, increasing fauna and flora and preventing floods**

The International Commission for the Protection of the Rhine (ICPR) enables co-operation at the level of the Rhine river basin, including its alluvial areas and the waters in the watershed. It was formed in 1950 on a diplomatic basis between Switzerland, the Netherlands, France, Germany and Luxemburg. It was given a legal basis by the Berne Convention in 1963. The EEC joined as a member in 1976. The ICPR combines political representatives and technical experts. Over the years, it has deployed several significant benefits for the Rhine river basin:

- Improved water quality.
- Increased number of animal and plant species.
- Flood prevention.
- Ecological improvements.

Source: (Black and Kauffmann, 2013<sup>[5]</sup>), “Transboundary water management”, in OECD, *International Regulatory Co-operation: Case Studies, Vol. 3: Transnational Private Regulation and Water Management*, OECD Publishing, Paris, <http://dx.doi.org/10.1787/9789264200524-4-en>.

#### **Participation in multilateral organisation helped enhance the effectiveness of chemical testing, with reduced costs and health and environmental gains**

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

Source: (OECD, 2013<sup>[4]</sup>), Chapter 1: “Chemical safety”, *International Regulatory Co-operation: Case Studies, Vol. 1: Chemicals, Consumer Products, Tax and Competition*, OECD Publishing, Paris, <http://dx.doi.org/10.1787/9789264200487-en>.

## Key diagnostic elements of IRC in Mexico

**Mexico stands out for its commitment to and *de facto* active use of a variety of IRC approaches** (Figure 2). In particular, IRC has been strongly embedded in Mexico's regulatory improvement disciplines, i.e. in the development and revision of regulation initiated by the Executive branch of the federal level. This is noteworthy in itself, as it is an area where IRC has only recently become a key component of regulatory quality across OECD countries, namely through the OECD 2012 Recommendation. Therefore, most countries are still exploring the effective means of making use of it, and only few have truly introduced dedicated IRC practices as part of their regulatory policy agenda. Yet, Mexico has recently amended its ambitious and advanced legal framework put in place to promote better regulation to make a particularly sophisticated connection between good regulatory practices and trade, which goes beyond the current practice in most other countries. In addition, the Mexican government and individual regulators engage extensively in international co-operation, at the bilateral, regional and multilateral level, both through high-level political initiatives and at the technical level.

**Through these efforts, Mexico is showing strong resolve to place itself at the forefront of effective IRC. However, these important and visible efforts have happened in an ad hoc and pragmatic manner and not as the result of a comprehensive strategy.** A number of challenges still prevent IRC from deploying its full benefits for the Mexican population: IRC efforts remain often ad hoc, fragmented and limited in scope, and when conducted, IRC does not necessarily deliver tangible outcomes. This review provides a timely opportunity for Mexico to take stock of its IRC efforts and develop a more coherent approach building on achievements so far. It will help the country prioritise its IRC actions in a more resource efficient manner.

Based on the overview of Mexico's IRC policies, practices and accomplishments provided in the three chapters of this report, the review identifies three broad areas of improvement. The initial step that could help Mexico strengthen its political commitment and align incentives in support of more systematic IRC is to design and develop a holistic, strategic vision for IRC, with clearly defined roles and responsibilities (1). Building on such a vision, the Mexican government will have a more comprehensive avenue to ensure that all relevant actors are well informed about IRC and have sufficient incentive to conduct IRC (2), and that the IRC initiatives are effectively implemented (3). These three axes cut across the three chapters of this review, whether the institutional and policy framework for IRC in Mexico (Chapter 1), the unilateral approaches to IRC (Chapter 2), or the co-operative IRC efforts (Chapter 3).

Taking into account the pioneering character of IRC policy and practices, the recommendations aim to support Mexico build on its already advanced IRC framework to achieve better outcomes. The review acknowledges that understanding of good practices in this area is still evolving and that most countries are still struggling with establishing the basic IRC requirements.

**Figure 2. Overview of Mexico's IRC efforts****Integration of IRC in GRP**

- Consideration of trade impacts in RIA, connected with notifications to World Trade Organization
- Requirement to adopt international standards in technical regulations

**MoU/Exchange of information between regulators**

- Many sectoral MoUs signed by different Ministries

**Regulatory co-operation partnerships**

- HLRCC with the United States, current stalemate
- North American Leaders' Summit between Canada, United States and Mexico

**Mutual recognition**

- Many different recognition approaches (unilateral recognition of specific measures, 4 governmental MRAs with NAFTA partners, 30 arrangements between conformity assessment bodies, 7 MRAs on professional qualifications and a multilateral recognition in APEC)

**Regulatory provisions in trade agreements**

- GRP and IRC chapters in new and upcoming trade agreements (Pacific Alliance, NAFTA, etc.)

**Trans-governmental networks**

- Active contribution of Mexican regulators to a variety of decentralised networks of regulators (Regulatel, ICN, IOSCO, etc.)

**Joint rule-making via intergovernmental organisations**

- Active contribution of Mexico to international and regional fora

**Regulatory harmonisation**

- Ad hoc examples of harmonisation of specific technical regulations. E.g. development of joint standards between Mexico and Canada on fire safety services and on tubes; minimum energy performance standards for refrigerators and freezers

*Source:* Author's own elaboration.

## Building a holistic IRC vision and a strategy of how IRC can foster economic development and contribute to the wellbeing of Mexican citizens

**Currently, the vision and policy for IRC in Mexico is fragmented across different legal and policy documents and may generate different requirements on the various regulatory tools.** Mexico's legal and policy framework relevant to IRC is embedded into two main sets of legal provisions: i) two key documents framing IRC practices in domestic rule-making, namely the Federal Law of Administrative Procedure (LFPA) and the Federal Law of Metrology and Standardisation (LFMN); and ii) various legal and policy documents framing Mexico's co-operation efforts across borders on regulatory matters, including the Law on Celebration of Treaties (LCT), the Law on Foreign Trade (LCE) and a multiplicity of sectoral provisions. As a consequence, overall Mexico's IRC strategy and vision are not unified, making it difficult to convey its importance and expected practices to regulators. Mexico could benefit from an articulated vision and strategy for IRC that bring together the various efforts carried out at the unilateral, bilateral and multilateral level. A holistic vision of IRC would help ensure that IRC is embedded all throughout Mexico's public policy activities, and that all the authorities involved in conducting IRC contribute to pursuing a same goal.

**Many authorities in Mexico are involved in IRC, either by conducting IRC, or overseeing implementation or both. Still, many of these authorities operate in silos, without a common understanding of IRC and its contribution to Mexico's development.** As a result, IRC tends to be led by individual authorities particularly exposed to international context, and lacks a whole of government perspective. Clearly defined IRC roles and responsibilities would help enhance the effectiveness of the IRC practices of each authority, and of the Mexican government as a whole. In particular, oversight of IRC is *de facto* shared between several authorities, namely COFEMER (the oversight body for regulatory improvement in Mexico, now CONAMER),<sup>1</sup> the Ministry of Economy (which is in charge of negotiating trade agreements and supervises the standardisation process in Mexico, the adoption of international standards and WTO notification) and the Ministry of Foreign Affairs (in charge of co-ordinating the international activity of governmental authorities). Such sharing of oversight responsibilities is common in OECD countries (OECD, 2013<sub>[3]</sub>; OECD, 2018<sub>[6]</sub>). Nevertheless, the risk of fragmentation, and sometimes of overlap in functions, is of undermining of a whole-of-government approach, for both unilateral disciplines and co-operative efforts. In this situation, the experience of other countries, such as Canada, has shown the importance of clear allocation of responsibilities regarding IRC and strong co-ordination among relevant entities (see Box 4).

**Mexico has introduced innovative procedures and legal requirements to embed international considerations in its domestic rule-making process. These IRC considerations are particularly developed with regards to trade considerations, driven by Mexico's efforts to comply with its WTO obligations under the agreements on Sanitary and Phytosanitary measures (SPS) and Technical Barriers to Trade (TBT). By contrast, the potential of IRC to enhance the effectiveness of domestic regulation more generally is not fully exploited.**

The current Foreign Trade RIA procedure provides for a well-thought co-ordination mechanism among authorities within the Mexican government, and offers a useful avenue to consider impacts of regulation on Mexican imports and exports. It is mostly focused on ensuring notifications to the WTO as per the SPS and TBT Agreements. Only recently introduced, it is still early to evaluate its benefits for the quality of Mexican regulations

and the effectiveness of WTO notifications. Looking ahead, the co-ordination it creates and the opportunity it opens to identify trade-effects of regulations may be further leveraged to build a better understanding of the significance of non-tariff barriers to trade and to guide regulators in addressing unnecessary regulatory burdens to trade.

Mexico has introduced detailed requirements for regulators to use existing international instruments as the basis of technical regulations and standards when relevant, in line with a growing tendency in OECD countries to do so (OECD, 2018<sub>[6]</sub>). As such, the rule-making process of technical regulations and standards in Mexico is well geared towards aligning the Mexican regulatory framework with international instruments, to avoid the adoption of technical regulations and standards that are unnecessarily burdensome for international trade. By contrast, there is no general requirement calling for the consideration of international instruments in developing subordinate regulations more broadly. Further consideration of international instruments from the very outset of the regulatory process for all subordinate regulations may support better informed rule-making and enhance compatibility with regulatory approaches developed at the international level. It is indeed when policy options are being considered or a draft is being developed that gathering evidence on international instruments may provide useful references to regulators and help ensure compatibility between domestic policy and the international instruments (OECD, 2018<sub>[6]</sub>).

Certain procedures as part of the regulatory impact assessment (Foreign Trade RIAs, or high impact RIAs) require that regulators take into account the international environment, both in the assessment of impacts and in the assessment of regulatory alternatives. A further broadening of such requirements to all RIA procedures applicable to all subordinate regulations (including technical regulations) may offer a useful tool to support regulators in collecting relevant foreign and international evidence, expertise and regulatory approaches upon which to base their own measures and decisions.

**While the consideration of the international environment is increasingly embedded in Mexico's regulatory improvement practices of the Federal executive branch, the legislative and judicial branches of government and subnational level of government have largely been excluded so far.** The General Law of Regulatory Improvement (see Box 1.3), may provide an opportunity to remedy some aspects of this situation. While it does not address IRC directly for other branches beyond the executive and for the subnational levels of government, it introduces the obligation to embed GRPs during their rule-making process. The delivery of the Law will provide ample opportunities to foster awareness and support exchange of practices among these different levels, including in relation to IRC.

### ***Recommendations***

*Develop a clear vision on how IRC contributes to the wellbeing of Mexican citizens within the broader context of the national development strategy, with a medium-term pathway and long term objectives.*

- ***The vision for IRC should clarify the objectives and expected IRC practices, taking into account the variety of IRC approaches and their respective benefits and challenges.*** Objectives pursued through IRC should go beyond lowering trade barriers. Mexico's vision for IRC should also support the effectiveness and administrative efficiency gains related to transfer and pooling of evidence and expertise allowed by greater regulatory co-operation across borders, guarantee competition, safety of products for Mexican consumers, and protect the

environment and protect human health and safety, among others. So far, only a couple of OECD countries have established a common central definition of what IRC is and of what it entails in their jurisdictions (Box 2). These examples, as well as the IRC framework developed by the OECD may serve as inspiration to build the domestic vision. Chile's National Agenda for Productivity, Innovation and Growth (Box 3) also provides a useful example of the integration of regulatory reform within the country's broader productivity agenda.

- ***The IRC strategy should be shared across government and designed with inputs from within and outside of government to ensure ownership of the strategic priorities.*** Regulators know their field and peers. The government objective should be to facilitate their co-operation by clarifying what IRC is and what can be expected from it; and guidance where needed, and by facilitating access to relevant information (see below).
- ***Given the constraint on government resources, the strategy should prioritise the international co-operation efforts where there is a strong rationale for IRC*** (Box 5 provides the potential factors driving the success of co-operation). Typically, the benefits of co-operation tend to outweigh the costs of IRC where there is a neighbouring relationship or strong economic ties, such as trade inter-dependency. Bilateral regulatory co-operation with trading partners is likely to reduce trade frictions and enhance Mexico's import and export flows. More systematic bilateral regulatory co-operation with neighbouring countries may also help address joint challenges related to geographic vicinity or similar preferences (e.g. co-operation on environmental policies in the Gulf of Mexico). Co-operation can take place at the national/federal level, or at the sub-national one (between states for example), or, even, between the federal level and a neighbouring foreign state.<sup>2</sup> More broadly, further efforts may be invested in bilateral and regional co-operation of Mexican regulators with other Latin American countries, particularly those with similar regulatory quality disciplines. With other countries that Mexico has less existing ties with, regional and multilateral settings provide important opportunities to catalyse and benefit from exchange of information, evidence and learning from a broad range of partners. In this respect, information gathered through regulatory improvement disciplines (e.g. *ex ante* and *ex post* impact assessments or through stakeholder engagement processes) could be leveraged to identify the priorities for the strategic IRC vision and where to target specific IRC efforts.

*Ensure co-ordination and dialogue about IRC to encourage more systematic uptake of IRC*

- ***Enable fluid dialogue and co-ordination across authorities overseeing the conduct of IRC across government.*** Constant dialogue between the three main institutions overseeing the different IRC activities can be further institutionalised. As the vision for IRC develops, it should be accompanied by further clarification of IRC attributions in the laws and/or bylaws of relevant authorities. Given the breadth of IRC, the supervision of IRC activities is likely to remain shared between several authorities. Constant co-ordination across the responsible authorities, notably COFEMER, the Ministry of Economy and the Ministry for Foreign Affairs, will be essential to ensure a common vision, as is the case in Canada (Box 4).<sup>3</sup> A dedicated staff specialised in IRC in each of the relevant entity could help facilitate stewardship of the IRC strategy and promote continuous flow of information to regulators and the public service.



- **Enhance strategic exchanges between the SRE and line ministries or sectoral regulators** that participate directly in international organisations to ensure a more co-ordinated position across IOs.
- **Enhance awareness about and understanding of IRC across all authorities whether from the federal government, state-level, municipalities; legislative or judicial powers, as well as autonomous bodies.** The implementation of the General Law of Regulatory Improvement and the reform on the Law of Metrology and Standardisation provide ideal opportunities to discuss how the regulatory improvement and the standardisation agendas can promote a whole-of-government strategy for IRC in support of Mexico's development.
- **Ensure dialogue among regulators across the government.** There are strong common challenges and interests across regulators when it comes to regulatory quality and co-operation. In this sense, a mechanism for discussion and exchange among regulators could help them build common understanding, share experience and learn from each other on IRC. The models introduced in Canada and New Zealand may provide useful lessons in this regard (Box 2).
- **Provide opportunities for dialogue with stakeholders on IRC to help prioritise IRC efforts.** Stakeholders best understand the regulatory barriers and misalignments that generate costs or frictions to their activities and impede their growth. Close engagement between high-level political authorities, regulators and regulated entities to hear their priorities for co-operation may help to focus efforts. The public consultation in both Mexico and the United States carried out to develop the HLCRR work plan provides a relevant example and a precedent. Such consultation opportunities could be made more regular. International examples of relevance include the consultations undertaken in Canada and the United States in the framework of the Regulatory Co-operation Council (RCC) and the Refit platform established by the European Commission (Box 7).

*Promote and embed in regulatory improvement a broader understanding of IRC going beyond trade and permeating the full regulatory process*

- **Systematise the consideration of international instruments and practice (beyond international technical standards) in the process of development of primary and subordinate regulations (beyond technical regulations).** When drafting new subordinate regulations, regulators could be encouraged to further consider international instruments relevant to the regulated area, with an indication of the level of compliance with the international instruments, in line with what is already done for technical regulations.
- **Systematise the consideration of international experience in the RIA process.** The RIA process is a unique opportunity to collect evidence and catalyse the expertise of regulators in other jurisdictions. However, beyond specific case of foreign trade RIAs, the consideration of foreign and international practices in the consideration of regulatory alternatives is only required when a RIA with high impact is carried out. The question “Describe the manner in which the problematic is being regulated in other countries and/or the good international practices in this matter” could be made systematic to all RIAs conducted.

### **Box 2. Policy frameworks for International Regulatory Co-operation: the cases of Canada, New Zealand and the United States**

Some OECD countries have invested in defining and consolidating a policy framework for IRC. The approaches can come in the form of administrative orders, like in the United States; as policy instruments, as in Canada; or in the creation of practical toolkits integrating the various IRC approaches and case studies as in New Zealand.

#### **Canada**

The Cabinet Directive on Regulatory Management (CDRM) establishes the requirements that Canadian regulators must meet when developing and implementing regulation. The Directive instructs departments and agencies to take advantage of opportunities for co-operation with other jurisdictions in order to minimise barriers to trade and to reduce the number of Canadian-specific regulatory requirements unless they are warranted.

The Treasury Board of Canada Secretariat, the central regulatory oversight body is responsible for establishing strategies and priorities in relation to regulatory co-operation for the Government of Canada, which it defines as a process where governments work together to:

- reduce unnecessary regulatory differences;
- eliminate duplicative requirements and processes;
- harmonise or align regulations;
- share information and experiences; and
- adopt international standards.

Canada's policy framework on IRC applies to a range of regulatory activities, including: policy development; inspections; certification; adoption and development of standards; and product and testing approvals.

#### **New Zealand**

New Zealand Government Expectations for Good Regulatory Practice incorporates international regulatory co-operation elements. These include expectations for regulatory system design focusing on consistency with relevant international standards and practices to maximise the benefits from trade and cross border flows (except when this would compromise important domestic objectives and values). The Legislation Design and Advisory Committee Guidelines on Process and Content of Legislation deal with cross-border issues, as well as treaties and international obligations. The Guidelines have been adopted by the New Zealand Cabinet and are the government's key point of reference for assessing whether draft legislation is consistent with accepted legal and constitutional principles.

New Zealand is also developing a practical toolkit on IRC, drawing on a paper published by the Australia and New Zealand School of Government that documents the deep experience of trans-Tasman regulatory co-operation. The toolkit ultimately aims to enable domestic policymakers and regulators to make informed choices about different IRC options. The toolkit presents a continuum of co-operation options, ranging from unilateral co-ordination through informal and formal co-operation. The

toolkit will outline the benefits and costs of different options on the continuum, supported by relevant case studies. The toolkit identifies the following objectives for co-operating: i) to lower barriers to trade and investment, ii) to enhance regulatory capacity and build confidence and trust, iii) to increase policy and regulatory effectiveness.

#### United States

IRC is enshrined in Executive Order 13609 and has the following salient features:

- give the role and responsibility of IRC to a specific Working Group;
- regulators need to report on IRC activities that are ‘reasonably anticipated to lead significant regulations’ in the annual Regulatory Plan;
- regulators shall identify regulations with “significant international impacts”;
- regulators need to address “unnecessary differences in regulatory requirements” as part of retrospective, *ex post*, review;
- for regulations with “significant international impacts,” regulators need to consider certain approaches of foreign governments.

The Executive Order adds prerequisites to co-operate with other parties: i) regulatory transparency and public participation; ii) internal whole-of-government co-ordination; and iii) carrying out regulatory assessments.

Source: Treasury Board website: [www.canada.ca/en/treasury-board-secretariat/services/regulatory-cooperation/learn-about-regulatory-cooperation.html](http://www.canada.ca/en/treasury-board-secretariat/services/regulatory-cooperation/learn-about-regulatory-cooperation.html) (accessed 5 March 2018) and Canada’s Cabinet Directive on Regulatory Management: [www.canada.ca/en/treasury-board-secretariat/services/federal-regulatory-management/guidelines-tools/cabinet-directive-regulatory-management.html#cha610b](http://www.canada.ca/en/treasury-board-secretariat/services/federal-regulatory-management/guidelines-tools/cabinet-directive-regulatory-management.html#cha610b) (accessed 23 March 2018); United States Executive Order 13609: [www.gpo.gov/fdsys/pkg/FR-2012-05-04/pdf/2012-10968.pdf](http://www.gpo.gov/fdsys/pkg/FR-2012-05-04/pdf/2012-10968.pdf) (accessed 5 March 2018); APEC Meeting Documents Database: [http://mddb.apec.org/documents/2014/ec/wksp2/14\\_ec\\_wksp2\\_002.pdf](http://mddb.apec.org/documents/2014/ec/wksp2/14_ec_wksp2_002.pdf) (accessed 5 March 2018), (OECD, 2013<sup>[3]</sup>), International Regulatory Co-operation: Addressing Global Challenges, OECD Publishing, Paris, <http://dx.doi.org/10.1787/9789264200463-en>.

### Box 3. The Chilean National Agenda for Productivity, Innovation and Growth

The Chilean government launched the 4-year National Agenda for Productivity, Innovation and Growth, which uses regulatory reform as a driver to foster broader government goals. The Agenda, co-ordinated by the Ministry of Economy, involved the participation of the political parties, as well as a wide array of ministries and agencies, oriented towards tackling the productivity gap.

The Agenda includes 47 measures categorised in 7 action plans including “regulatory efficiency and public service delivery” and “new institutionalism”. Both involve regulatory reform measures to establish governance arrangements that support new policies and tools to improve the quality of regulation.

The agenda was disseminated amongst the public and private sector and a dedicated website ([www.agendaproductividad.cl](http://www.agendaproductividad.cl)) showed progress in each of the measures. Overall, the Agenda introduced 47 measures, 10 law bills and 37 administrative initiatives, with an investment of USD 1 500 million between 2014 and 2018.

Source: Ministry of Economy, Development and Tourism (2014), “Agenda de productividad, innovación y crecimiento 2014-2018”, [www.agendaproductividad.cl/](http://www.agendaproductividad.cl/) (accessed 10 March 2018).

#### Box 4. Co-ordination on IRC in Canada

In Canada, IRC responsibilities are allocated across three different entities. The Treasury Board of Canada Secretariat is the body responsible for establishing policies and strategies to advance IRC. To do so, it works very closely with Global Affairs Canada, which is responsible for leading the negotiation of bilateral, plurilateral and multilateral trade agreements, and the Standards Council of Canada, the body responsible for co-ordinating domestic and international standardisation activities. The three organisations have established strong ties in order to ensure a coherent IRC vision and practice.

**Table 1. Allocation of responsibilities on IRC, Canada**

Treasury Board Secretariat (TBS)	Global Affairs Canada (GAC)	Standards Council of Canada (SCC)
Oversees the regulatory lifecycle (development, management and review).	Leads the negotiation of free trade agreements, including GRPs and IRC, <b>with support from TBS.</b>	Co-ordinates standardisation activities (domestic and international).
Enforces the use of GRPs – including IRC – through challenge function of regulatory proposals.	Provides TBT and SPS notifications to WTO when regulations have a potential trade impact.	Advises federal and provincial/territorial governments on issues pertaining to the incorporation of standards in regulation.
Provides advice and guidance to regulators on policy requirements, best practices, etc. This includes guidance on incorporating standards in regulation <b>in collaboration with SCC.</b>	Represents Canada at international organisations such as WTO, <b>with support from TBS and SCC as required.</b>	Promotes use of international standards to support compliance with CDR and the WTO TBT Agreement, <b>with support from TBS and GAC.</b>
Co-ordinates formal domestic and international regulatory co-operation fora with other jurisdictions on behalf of the Government of Canada		Represents Canada in international and regional standards fora.

*Source:* Ritchot, J. (2018), presentation made in the IRC Policy Workshop, 7 February, at the Ministry of Economy, Mexico.

#### Box 5. The potential factors driving the success of IRC

OECD has identified a number of factors that promote, hinder and shape IRC endeavours. These hypotheses may inform policymakers pondering about when, how and with whom to engage in IRC. They do not represent, however, static rules on the political economy of IRC.

- **Geographical proximity:** geographical proximity may increase the need and likelihood of co-operation and IRC due to joint challenges, similar worldviews and preferences.
- **Economic interdependence:** high trade volumes may increase the likelihood for co-operation so as to lock in a certain level of regulatory openness and to lower trade costs through the dismantling of unnecessary regulatory divergence. Balanced interdependence should moreover promote the use of negotiated IRC instruments, while imbalanced interdependence should promote the use of unilateral IRC instruments such as Good Regulatory Practices (GRP).

- **Political and economic properties of potential partners:** IRC should be easier in hierarchical relationships between rule-makers and rule-takers than in hierarchical relationships between two rule-makers or two rule-takers. In non-hierarchical complex relationships, the availability of international regulation and standards should significantly facilitate IRC.
- **Nature of regulation:** the political sensitivity of measures subject to regulation – i.e. their inherent risk levels or social and economic nature – should significantly affect the likelihood of IRC. IRC on politically sensitive measures should be more difficult than IRC on less sensitive measures. IRC commitments, moreover, can promote market integration on a preferential basis or non-preferential basis. Preferential commitments should fuel competitive IRC efforts, whereas non-preferential IRC should trigger no such phenomenon. Finally, depending on the sector, regulation and standards can be subject to either positive feedback processes promoting IRC or inter-state competition and free riding dynamics hindering IRC.
- **Domestic regulatory governance:** IRC may hinge on transparent regulatory governance and the ability of states to actually enforce regulation and IRC commitments at the domestic level.

*Source:* (Basedow and Kauffmann, 2016<sup>[7]</sup>), “The Political Economy of International Regulatory Co-operation: A theoretical framework to understand international regulatory co-operation”, *unpublished Working Paper*, OECD, Paris.

#### Box 6. Examples of domestic networks of regulators

In **Canada**, federal regulators have a partnership where federal departments and agencies can collaborate and improve capacities of staff involved in regulation. The Community of Federal Regulators does so by following three strategic objectives:

- Targeted recruitment and strengthen regulatory capacity across the community of federal regulators
- Collaborate to share regulatory expertise
- Increase community understanding of innovative regulatory concepts, and enable their application

The Community of Federal Regulators uses an internal wiki digital platform only available to employees of the Canadian Government for collaboration purposes and is composed of 29 agencies.

In **New Zealand**, the Government Regulatory Practice Initiative (G-REG) is a network of central and local government regulatory agencies established to lead and contribute to regulatory practice initiatives. It works on actions that improve leadership, culture, regulatory practice and workforce capability in regulatory organisations and systems. It has three areas of focus:

- *Developing organisation capability:* from sharing approaches to compliance activities and developing guidance material;
- *Developing people capability:* from structured and formal training, and shared informal learning; and,

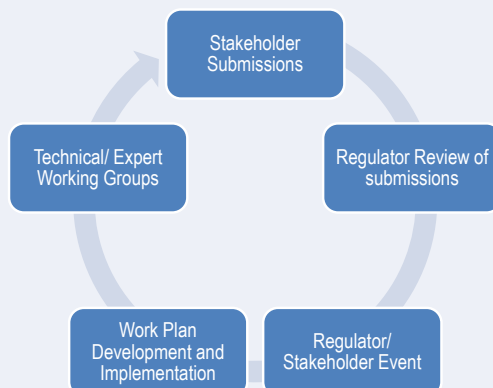
- *Developing a professional community of regulators*: both resulting from, and enabling the development of, organisation and people capability over time.

Sources: Government of Canada: [www.canada.ca/en/health-canada/corporate/about-health-canada/legislation-guidelines/community-federal-regulators.html](http://www.canada.ca/en/health-canada/corporate/about-health-canada/legislation-guidelines/community-federal-regulators.html) (accessed 5 March 2018) and New Zealand Ministry of Business, Innovation and Employment: [www.mbie.govt.nz/about/our-work/roles-and-responsibilities/regulatory-systems-programme/cross-cutting-issues/regulatory-capability-g-reg-initiative](http://www.mbie.govt.nz/about/our-work/roles-and-responsibilities/regulatory-systems-programme/cross-cutting-issues/regulatory-capability-g-reg-initiative) (accessed 17 March 2018).

### Box 7. Collecting the views of stakeholders

From the beginning of the **Canada-U.S. Regulatory Cooperation Council (RCC)** in 2011, stakeholders' perspectives have played a key role in identifying the regulatory co-operation opportunities and priorities of mutual benefit to both countries. The initial Joint Action Plan, which set out a first set of actions and initiatives to move towards greater alignment between Canada and the United States, was based on input received through public consultations from citizens, companies, industry groups, civil society, and other levels of government, all of which helped the RCC Secretariat identify priority focus areas. In particular, a unique feature of the Canada-U.S. RCC is the annual stakeholder event, which is a foundational element in the RCC work planning process (Figure 3). It provides an important forum for interactive discussion of ideas between senior regulators and stakeholders, helping to ensure that work plans are informed by stakeholder priorities. The most recent stakeholder event was held in Washington, D.C. in May 2016 at the Canadian Embassy and the Woodrow Wilson Centre. The next event will be held in the course of 2018.

**Figure 3. Components of the Regulatory Cooperation Council work plan process**



In Europe, the **REFIT platform** was set up as part of the European Commission's better regulation agenda to ensure feedback from country to the supra-national level. The platform:

- Supports the process of simplifying EU law and reducing regulatory burdens, for the benefit of civil society, business and public authorities;
- Makes recommendations to the Commission, taking into account suggestions made by citizens and interested parties.

It consists of a Government Group, with one seat per Member State and a Stakeholder Group with 18 members and two representatives from the European Social and Economic Committee and the Committee of the Regions.

The European Commission analyses the recommendations made by the platform and explains how it intends to follow them up.

Source: [https://ec.europa.eu/info/law/law-making-process/evaluating-and-improving-existing-laws/refit-making-eu-law-simpler-and-less-costly/refit-platform\\_en](https://ec.europa.eu/info/law/law-making-process/evaluating-and-improving-existing-laws/refit-making-eu-law-simpler-and-less-costly/refit-platform_en).

### **Increasing the information basis about IRC tools available, their applicability in different contexts and the variety of existing IRC practices throughout the government**

**Both the regulatory improvement and the standardisation processes provide important opportunities to collect information on expected regulatory impacts and regulators' use of international standards. However, this information is largely under-exploited, and could be further leveraged to target efforts where implementation of IRC is still limited.**

COFEMER holds a database of RIAs describing expected impacts of regulation. In addition, COFEMER tracks stakeholders inputs, and can therefore compile information on the foreign stakeholders that submitted comments to the RIA consultation process, as well as to regulators informally. DGN also has information on foreign comments received through the WTO, and eventually FTA partners. Autonomous bodies, such as IFT, have their own regulatory improvement processes, as part of which they have significant information on the impacts of their regulations. Overall, the information on impacts and the comments received from stakeholders could be a useful source of information to better target IRC concerns and efforts.

Information on the international instruments considered by regulators in the development of regulations is fragmented, depending on the regulatory process followed. More systematic monitoring and data gathering of the practices of authorities in their consideration of international instruments would help identify the recurring international frameworks of relevance as well as the gaps and focus training efforts in the direction of sectors where the consideration of the international environment is weak. Ultimately, the information on the use of international instruments and the challenges faced will also be of value to the international organisations in charge of their development, which can then use this evidence to feed in their own monitoring and evaluation of norms processes.

Mexico engages in numerous co-operation efforts, whether bilaterally, regionally and multilaterally. Co-operation is carried out both through central government and regulatory agencies directly. These experiences are an invaluable source of evidence on regulatory options for domestic regulators. The Ministry of Foreign Affairs has centralised oversight on international co-operation efforts of the Mexican public administration. To date, however, information on co-operation initiatives is fragmented and not used to build better understanding of IRC developments and achievements in Mexico.

The Ministry of Foreign Affairs is systematically consulted for the conclusion of all binding international agreements, and in practice also for a number of voluntary commitments. In addition, the Ministry of Economy has a database for searching trade

agreements, available to the public. There is therefore access to valuable information about a broad range of co-operation agreements. In addition, the Ministry of Foreign Affairs has a comprehensive vision of all the international organisations in which Mexico has membership, accrediting all Mexican authorities that participate in these bodies. However, the information it gathers about international agreements and international bodies is not systematically used. A comprehensive vision of where international IRC efforts are taking place and where further efforts are necessary is essential to develop a broad strategy for international co-operation.

By contrast, there is no obligation to inform the Ministry of Foreign Affairs about the conclusion or implementation of voluntary agreements, such as Memoranda of Understanding (MoUs), despite being a popular form of co-operation for all levels of government, federal, state and municipal, across diverse sectors and policy areas. With regulatory agencies lacking incentive to provide information about the agreements they conclude, it is difficult to draw an exhaustive picture of co-operation agreements, of the state of their implementation. Lack of systematic information also makes it difficult to have a clear understanding of their impacts and of their effectiveness in achieving their objectives. Information about MoUs as flexible co-operation efforts would be valuable to identify their key features, map the successful stories and inform the regulatory community of the range of experiences and options.

Mexico's Membership in international organisations is public information, and the Ministry of Foreign Affairs lists some of the bodies it participates in on its public website. Still, a comprehensive list of all international organisations is not available, and information on participation in trans-governmental networks of regulators in particular is decentralised. Further visibility on these international bodies may enhance awareness about Mexico's international activity and facilitate the consideration of international frameworks for co-operation more systematically in domestic rule-making activities.

### ***Recommendations***

*Key institutions such as COFEMER, the Ministry of Economy, and SRE could make more systematic use of the IRC information that they collect (e.g. on regulatory impacts through RIAs, on the use of international standards, on feedback from foreign stakeholders, on international agreements) to better understand the impacts of different IRC approaches*

- ***Both COFEMER and DGN can leverage the information on the use of international instruments*** gathered respectively through RIA procedures or the standardisation process to identify the overall level of adoption of international instruments and other references to foreign practice in Mexico rule-making.
- ***COFEMER and DGN can use information gathered through stakeholder engagement and WTO notification procedures to identify the markets and parties affected*** by draft regulations and to address trade frictions with these markets.
- ***RIAs and ex post evaluation provide a wealth of publically available information on expected and actual impacts of new regulatory measures and references to international practices.*** COFEMER could rely on this basis to identify good practice and flag examples in evaluating trade costs and referring to relevant international frameworks.



- *The SRE and DGN who have a comprehensive view on respectively binding international treaties and mutual recognition agreements and arrangements, can make use of this information to identify sectors in which and/or countries with whom Mexico still has limited number of agreements.*
- *The more systematic collection of information on IRC practices can help target authorities in need for training about IRC.*

*Raise awareness of the benefits of IRC among regulators to offer them further incentive to make use of IRC*

- *Each regulator could consolidate the information on international/foreign standards used in a database or repository to help other related regulators or future administrations in their search for relevant foreign references;*
- *A monitoring of co-operation efforts could help to learn from experience and build a coherent understanding of Mexico's IRC activities and of the benefits and challenges of alternative IRC approaches.* In particular, narratives could be developed around specific IRC experiences to illustrate the possible outcomes of IRC. For example, the Treasury Board of Canada reports on its website success stories of how specific IRC initiatives have reduced costs to business, have helped increase product choice and lower prices for consumers, and have improved health, safety, security and environmental protection.<sup>4</sup>

*Improve access to information about international commitments to enhance awareness of regulators and regulated entities*

- *Improve visibility for regulators of relevant international instruments and regulatory frameworks*, to encourage their more systematic consideration and allow them to provide feedback about their implementation. In particular:
  - Facilitate easy access to existing international obligations stemming from international organisations or international treaties.
  - Ensure information on rules, standards and guidance developed within international organisations is transmitted in a timely manner to technical experts in regulatory agencies.
  - Support regulators' understanding of "relevant" international standards by providing further visibility on the international standardisation bodies recognised as such by the Mexican government. This may entail updating the list of such bodies developed by DGN in 2012 and raising awareness about this list.<sup>5</sup>
  - Build on the existing SINEC electronic platform, to facilitate access to a broader range of international standards, by making them easily searchable by theme and focus area.
  - Organise training courses for regulators to clarify the steps to follow to incorporate international instruments in Mexican regulations, and guide them in the identification of relevant applicable international instruments and regulatory frameworks.

- ***When trade agreements contain regulatory provisions, systematise dialogue between regulators and trade negotiators upstream.*** Such dialogue would enhance regulators' awareness of forthcoming regulatory provisions and foster their relevance and effectiveness.

### Strengthening the framework to ensure effective implementation of IRC efforts

**Despite the ambitious *de jure* framework incorporating IRC in domestic rule-making, regulators lack guidance to systematically apply IRC in their regulatory process.**

The trade-RIA process generally prevents new measures with trade effects from being adopted without being notified to trading partners. However, there is no methodology to guide regulators in their determination of the trade impact of their regulation. As a result, they do not give a precise quantification or monetisation of the trade impacts of a measure, and the DGRCI is required to estimate case by case whether the trade impact is significant. Further methodologies on assessing the trade costs may help the regulators better estimate the trade effects of their regulations, eventually promoting measures that are less trade costly. In addition, this could help the DGRCI prioritise the measures to be notified to trading partners, which it does not currently do.

Despite the legal requirements to consider international instruments, in the drafting of technical regulations and standards, and in certain RIA procedures for subordinate regulations, the uptake of international instruments in Mexico is still limited. This may be due, in particular, to the lack of guidance on which international standards to consider. DGN has a list of the international standardisation bodies recognised as such by the Mexican government, as requested by art. 3 LFMN.<sup>6</sup> However, it is rarely made use of by regulators. Regulators still voice difficulty to have a 360 vision of all the international standards or relevant foreign regulations that exist, and where to look, when designing a new regulation.

**Some GRP tools remain underutilised for IRC in practice, in particular forward-planning, *ex post* evaluation, and to some extent stakeholder engagement. These tools complete the RIA process by allowing deeper insights into the impacts of a regulatory measure (via feedback from affected parties and *de facto* implementation) and can help build the evidence on IRC throughout the rule-making cycle.**

Mexico has a systematic forward planning tool for NOMs and NMX, the national standardisation programme (PNN, by the Spanish acronym) that ensures transparency and predictability of the regulatory framework. This is made publically available and also accessible to foreign stakeholders, notably through the WTO. Indeed, Mexico is the only WTO Member to circulate its PNN as a WTO document to all WTO Members, going beyond TBT Agreement obligations and committee recommendations. Mexico is also one of the very few OECD countries to provide translated summaries of all regulatory proposals in English, thus facilitating the understanding by foreign stakeholders, notably those from the United States. Still, while the PNN is shared with stakeholders to inform them about upcoming measures, it is not leveraged as an opportunity to obtain their feedback. In addition, the PNN is currently only for technical regulations and standards.

For subordinate regulation, a monitoring and evaluation exercise is carried out every two years through “regulatory improvement programmes”. Regulators are requested to set out the regulation, administrative procedures or services that will be created, modified or

abolished. The regulatory improvement programmes are made public for consultation. Based on stakeholder feedback, COFEMER reviews the programmes and the progress made and makes it public in their annual report. In addition, the General Law of Regulatory Improvement introduces forward planning for all subordinate regulations. When implemented, this will expand predictability of the Mexican regulatory framework significantly. Aligned procedures of forward planning for technical and subordinate regulations will help maximise the benefits of such tool.

Some striking examples of *ex post* assessment or reviews of the regulatory framework in Mexico show the important potentials of these tools for identifying the relevance of foreign or international rules and standards and the role that the COFEMER can have in flagging such relevant rules or standards. Like in most OECD countries, this is not yet however a systematic practice. Mexico could further build on its existing practices to further exploit *ex post* assessments to measure the cost and benefits of IRC.

**Mexican authorities show strong willingness to co-operate internationally, both at political and technical levels, whether to obtain information on their regulatory approaches, disseminate Mexican know-how, or more explicitly to align regulations. Still, many initiatives remain political statements of co-operation, with limited follow-up, due in part to lack of concrete commitments from the outset and rare monitoring of implementation. Limited monitoring also means that evidence on the impacts of such agreements is lacking.**

Overall, regulators are generally well informed about co-operation agreements available to them, but less about the best ways to maximise their use and follow-up after their conclusion. Some MoUs have concrete obligations with limited timeframes to encourage implementation in the short or medium term. However, the majority of MoUs include broad best endeavour language about exchange of information and experience, making it difficult to operationalise and to monitor implementation and impacts. While maintaining the flexibility key to MoUs, this tool widely used by regulators may be further exploited to maximise benefits for the quality of domestic rule-making, namely with sharing of successful experiences, guidance on effective provisions, and more systematic follow-up.

Mutual recognition approaches are perceived as a useful tool both by the Mexican Ministry of Economy, which has concluded several agreements with its North American neighbours, Canada and the United States, as well as by conformity assessment bodies directly, who have concluded many arrangements with their peers from around the world in the specific sector of electrical safety. Unfortunately and not unique to the country, there is limited evidence on the implementation / use of recognition to facilitate market entry and on the trade and other impacts of these agreements.

Mexico's inadequate conformity assessment infrastructure is also seen as an important impediment to the appropriate implementation of these approaches and may impact the willingness of foreign counterparts to conclude such agreements in a broader range of areas.

### ***Recommendations***

*Strengthen the systematic use of IRC in GRPs throughout the regulatory lifecycle, with further guidance and practical tools for regulators*

- ***Develop relevant guidance documents on IRC in general***, to ensure the implementation of the coherent understanding of IRC in Mexico. The guidance should be developed with and for regulators building on their experience, and

shed light on the variety of IRC approaches. Among the few countries that have developed guidelines in this area, Canada's Guidelines on International Regulatory Obligations and Co-operation provide an example (Box 9).

- ***Enhance visibility of existing guidelines on methodology to adopt international instruments***, and extend beyond NOMs and NMX also to subordinate regulations when considering relevant international instruments and practices more broadly (Box 8).
- ***Leverage further the Trade RIA procedure to estimate trade impacts and find ways of addressing them***, beyond merely notifications to the WTO. To do so, specific guidelines on the quantification and monetisation of trade impacts would facilitate the process of the Trade RIA, making it easier for regulators to respond and to oversee by the DGRCI. Such guidelines could be introduced, as part of the cost-benefit analysis by the COFEMER, in the RIA Guidelines. In addition, the trade RIA procedures could be subject to an evaluation to assess whether they have achieved their objectives and contribute to regulatory improvement.
- ***Systematise forward regulatory planning tools across regulatory tools, in particular across technical and subordinate regulations, and use them as platforms for early discussion with stakeholders, including foreign, on forthcoming regulatory plans***. In addition, making the final forward planning agendas publically available for all subordinate regulations, beyond technical regulations, will help ensure predictability of the regulatory framework and of upcoming consultations for all stakeholders, including beyond Mexico.
- ***Use more systematically ex post evaluation*** (related to a single measure or principle-based / broader stock reviews) to address inconsistency in the stock of regulation with international instruments and collect international expertise and practice.

*Strengthen implementation of political commitments with dedicated institutional framework*

- ***Capitalise on the well-developed framework of Memoranda of Understanding and mutual recognition approaches to ensure their more systematic use, as well as their monitoring***. This will help build confidence and gather the evidence on their achievements necessary to establish the conditions of successful co-operation more broadly. Box 10 builds on international experience of mutual recognition to derive their conditions of success.
- ***Ensure that the political commitments displayed in the co-operation agreements are accompanied by relevant implementation frameworks***, by including tangible co-operation objectives, an action plan and regular evaluation of progress, as well as human, financial and material resources necessary to ensure implementation.
- ***Provide guidance to support regulators in the conclusion of effective MoUs***. This could be done for instance by providing examples of language or provisions to be included in MoUs to favour more concrete commitments.
- ***Strengthen Mexican conformity assessment and regulatory enforcement infrastructure to provide confidence to domestic consumers and reinforce trust of foreign partners in implementation***. Ultimately, this could enable the conclusion of further mutual recognition agreements and arrangements.

**Box 8. How is the need to consider international standards and other relevant regulatory frameworks conveyed in other jurisdictions**

In **Australia**, there is a cross-sectoral requirement to consider “consistency with Australia’s international obligations and relevant international accepted standards and practices” (COAG Best Practice Regulation). Wherever possible, regulatory measures or standards are required to be compatible with relevant international or internationally accepted standards or practices in order to minimise impediments to trade. National regulations or mandatory standards should also be consistent with Australia’s international obligations, including the WTO Agreement on Technical Barriers to Trade and on Sanitary and Phytosanitary Measures (SPS). Regulators may refer to the Standards Code relating to ISO’s Code of Good Practice for the Preparation, Adoption and Application of Standards. However, OECD (2017) reports that to support greater consistency of practices, the Australian government has developed a Best Practice Guide to Using Standards and Risk Assessments in Policy and Regulation and is considering an information base on standards (both domestic and international) referenced in regulation at the national and sub-national level.

In the **United States**, the guidance of the Office of Management and Budget (OMB) on the use of voluntary consensus standards states that “in the interests of promoting trade and implementing the provisions of international treaty agreements, your agency should consider international standards in procurement and regulatory applications”. In addition, the Executive Order 13609 on Promoting International Regulatory Cooperation states that agencies shall, “for significant regulations that the agency identifies as having significant international impacts, consider, to the extent feasible, appropriate, and consistent with law, any regulatory approaches by a foreign government that the United States has agreed to consider under a regulatory cooperation council work plan.” The scope of this requirement is limited to the sectoral work plans that the United States has agreed to in Regulatory Cooperation Councils. There are currently only two such councils, one with Mexico and the other with Canada.

*Source:* Australia COAG Best Practice Regulation Guide: [www.pmc.gov.au/resource-centre/regulation/best-practice-regulation-guide-ministerial-councils-and-national-standard-setting-bodies](http://www.pmc.gov.au/resource-centre/regulation/best-practice-regulation-guide-ministerial-councils-and-national-standard-setting-bodies) and Best Practice Guide to Using Standards and Risk Assessments in Policy and Regulation: <https://industry.gov.au/industry/industryinitiatives/portfolioregulationreform/using-standards-and-risk-assessments-in-policy-regulation/pages/default.aspx>; US OMB Circular A 119: [www.whitehouse.gov/omb/circulars\\_a119](http://www.whitehouse.gov/omb/circulars_a119); US Executive Order 13609: [www.gpo.gov/fdsys/pkg/fr-2012-05-04/pdf/2012-10968.pdf](http://www.gpo.gov/fdsys/pkg/fr-2012-05-04/pdf/2012-10968.pdf).

### Box 9. Guidelines on International Regulatory Obligations and Cooperation in Canada

Canada has issued Guidelines on International Regulatory Obligations and Cooperation to help interpret the policy requirements in the Cabinet Directive on Streamlining Regulation (CDSR) pertaining to international obligations and international regulatory co-operation (IRC). The Guidelines include considerations for departments and agencies in choosing Partners for co-operation, and set a number of principles to guide departments and agencies when complying with international obligations, embedding IRC within the regulatory lifecycle or using international standards or guidelines. They are intended to assist managers, functional specialists, and regulatory staff to understand and comply with these requirements. These guidelines also clarify expectations of the Treasury Board of Canada Secretariat when exercising its challenge function on regulatory proposals.

*Source:* (Government of Canada, 2007<sup>[8]</sup>), “Guidelines on International Regulatory Obligations and Cooperation”, [www.canada.ca/en/treasury-board-secretariat/services/federal-regulatory-management/guidelines-tools/international-regulatory-obligations-cooperation.html](http://www.canada.ca/en/treasury-board-secretariat/services/federal-regulatory-management/guidelines-tools/international-regulatory-obligations-cooperation.html) (accessed 27 March 2018).

### Box 10. Success factors for Mutual Recognition Agreements and Arrangements

Based on observation of various recognition approaches, the OECD has identified a number of success factors, including:

1. regulatory domains which are science-driven and / or based on irrefutable facts,
2. issues / areas with strong commercial/trade motivations,
3. areas where regulators may benefit from sharing information and knowledge (i.e. safety, health, environment and consumer protection aspects),
4. areas where partner countries share similar problems,
5. areas where partner countries share similar objectives and/or standards,
6. countries with comparable economic, social, political, technological conditions,
7. domains where, upon regulatory rapprochement, sharing of testing, certification, inspection would be acceptable,
8. areas where authorities trust their respective regulatory/technical skills,
9. areas where bi-or multilateral frameworks exist and provide for regulatory coherence, including international standards.

*Source:* (Correia de Brito, Kauffmann and Pelkmans, 2016<sup>[9]</sup>), “The contribution of mutual recognition to international regulatory co-operation”, *OECD Regulatory Policy Working Papers*, No. 2, OECD Publishing, Paris, <http://dx.doi.org/10.1787/5jm56fqsfmx-en>.

## Notes

<sup>1</sup> At the time of writing of this report there was an ongoing discussion in Congress to adopt a General Law of Regulatory Improvement that was passed on 18 May 2018. This new law led to a change in the name of the Federal Commission for Regulatory Improvement (COFEMER) for the National Commission for Regulatory Improvement (CONAMER).

<sup>2</sup> For example, specific commissions are set up to facilitate co-operation between the Federal Government of Mexico with the State on Arizona through the Arizona-Mexico Commission ([www.azmc.org](http://www.azmc.org)), or between the governments of New Mexico and of Sonora ([www.governor.state.nm.us/Sonora.aspx](http://www.governor.state.nm.us/Sonora.aspx)).

<sup>3</sup> This is in line with (OECD, Forthcoming<sub>[111]</sub>) according to which reinforced collaboration between the regulators and government agencies would contribute to an improved efficiency of the normalisation process.

<sup>4</sup> [www.canada.ca/en/treasury-board-secretariat/services/regulatory-cooperation/learn-about-regulatory-cooperation.html](http://www.canada.ca/en/treasury-board-secretariat/services/regulatory-cooperation/learn-about-regulatory-cooperation.html).

<sup>5</sup> [www.dof.gob.mx/nota\\_detalle.php?codigo=5266340&fecha=04/09/2012](http://www.dof.gob.mx/nota_detalle.php?codigo=5266340&fecha=04/09/2012).

<sup>6</sup> [www.dof.gob.mx/nota\\_detalle.php?codigo=5266340&fecha=04/09/2012](http://www.dof.gob.mx/nota_detalle.php?codigo=5266340&fecha=04/09/2012).







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