2 Best Practice Principles on International Regulatory Co-operation

This chapter sets the Best Practice Principles on International Regulatory Co-operation, helping guide regulators and policy makers in making systematic use of international regulatory co-operation. They are organised around three building blocks: Establishing the IRC strategy and its governance, embedding IRC throughout the domestic rulemaking and co-operating internationally (bilaterally, plurilaterally and multilaterally). Ultimately, these principles will support governments in operating a paradigm shift to adapt laws and regulations to an interconnected world.

The 2012 Recommendation on Regulatory Policy and Governance [OECD/LEGAL/0390] (the 2012 Recommendation) recognises that policy makers and regulators can no longer work in isolation. They have much to learn from their peers abroad, and much to benefit from pooling scarce resources and aligning approaches. IRC has become an essential building block to ensure the quality and relevance of regulation today. The 2012 Recommendation therefore encourages Members and non-Members having adhered to it (the Adherents) 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*" (Principle 12).

These *Best Practice Principles on International Regulatory Co-operation* (Best Practice Principle) support the implementation of Principle 12 of the 2012 Recommendation by offering general guidance rather than detailed prescription. Nevertheless, Best Practice Principles are intentionally ambitious. Few countries meet the principles highlighted below. It is nevertheless worth pointing that because it is scarcely used systematically, it does not mean that IRC is not achievable. On the contrary, there are a number of practices and approaches that are easy to adopt, notably as part of regulatory practices. In this perspective, these Principles aim to provide policy-makers and civil servants in both OECD member and partner countries with a practical instrument to make better use of IRC.

The Best Practice Principles are organised around three building blocks:

1. Establishing the IRC strategy and its governance;
2. Embedding IRC throughout the domestic rulemaking; and
3. Co-operating internationally (bilaterally, plurilaterally and multilaterally).

The Best Practice Principles are summarised in Box 2.1 and detailed below. Throughout the text, Boxes provide illustrations of existing practices to facilitate the understanding of the Best Practice Principles. However, this is an area under fast development and where more practices will emerge over time. The forthcoming APEC-OECD IRC Resource will provide concrete examples of IRC practices implemented by countries.

Box 2.1. Summary of the Best Practice Principles on International Regulatory Co- operation

Establishing the IRC strategy and its governance

- Develop a whole of government IRC policy / strategy
- Establish a co-ordination mechanism in government on IRC activities to centralise relevant information on IRC practices and activities and to build a consensus and common language
- Enable an IRC conducive framework – i.e. raise awareness of IRC, build on existing platforms for co-operation, reduce anti-IRC biases and build in incentives for policy makers and regulators

Embedding IRC throughout the domestic rulemaking

- Gather and rely on international knowledge and expertise
- Consider existing international instruments when developing regulation and document the rationale for departing from them
- Assess impacts beyond borders
- Engage actively with foreign stakeholders
- Embed consistency with international instruments as a key principle driving the review process in *ex post* evaluation and stock reviews

- Assess *ex ante* the co-operation needs to ensure appropriate enforcement and streamline "recognisable" procedures

Co-operating internationally (bilaterally, plurilaterally and multilaterally)

- Co-operate with other countries to promote the development and diffusion of good practices and innovations in regulatory policy and governance
- Contribute to international fora which support regulatory co-operation
- Use mutual recognition in combination with international instruments
- Align IRC expectations across various policy instruments, including in trade agreements

Establishing the IRC strategy and its governance

In many cases, more systematic consideration of the international environment in domestic rulemaking requires a significant change in the regulatory culture of countries. Given the dynamic and interconnected environment, this change consists in understanding and embedding a "beyond the border" perspective in rulemaking and establishing relevant regulatory co-operation across borders. Such a cultural shift requires dedicated attention to establishing a whole of government strategy for IRC and to its governance, including reviewing the extent to which the current institutional, legal and policy regulatory environment provides sufficient directions, guidance and incentives for IRC. It is worth noting that a solid regulatory policy framework, including effective oversight mechanisms, is a *sine qua non* condition for a jurisdiction to establish ambitious IRC.

Develop a whole of government IRC policy/strategy

An IRC policy can be defined as a systematic, national-level, whole-of-government policy/strategy promoting international regulatory co-operation whether reflected in a broad strategic document or other instrument. It may incorporate but goes beyond any specific agreement drawn with key partners or regional approach adopted to promote regulatory co-operation. This policy is an opportunity to convey political leadership and build a holistic IRC vision and strategy with clearly defined roles and responsibilities. It can also help set a definition on IRC, to support a common understanding across the government. Ultimately, the IRC policy is also important to ensure IRC practices of policymakers and regulators feed into the broader strategic priorities of the government. IRC being a core component of regulatory quality, an IRC policy needs not stand alone and can be fully integrated into a broader regulatory policy. Examples of such policies are still rare. Box 2.2 presents selected country examples.

Box 2.2. Selected examples of whole of Government strategy and policy frameworks for IRC

IRC is formally embedded in **Canada**'s overarching regulatory policy framework, the Cabinet Directive on Regulation (CDR). The CDR requires regulators to assess opportunities for co-operation and alignment with other jurisdictions, domestically and internationally, in order to reduce unnecessary regulatory burden on Canadian businesses while maintaining or improving the health, safety, security, social and economic well-being of Canadians, and protecting the environment.

The Treasury Board Secretariat (TBS), central oversight body in Canada has a team of 16 full-time employees responsible for supporting and co-ordinating efforts to foster international and domestic regulatory co-operation. This team works with regulators to ensure that they meet their obligations under the CDR and lead Canada's participation in different regulatory co-operation fora. TBS also

works closely with Global Affairs Canada to negotiate regulatory provisions in trade agreements, including those related to IRC.

In **New Zealand**, IRC considerations are embedded in core documents, including the Government Expectations for Good Regulatory Practice and the Government's Regulatory Management Strategy. Responsibility for oversight and promoting consideration of IRC is shared across several agencies: the Treasury's lead agency on good regulatory practice; the Ministry of Business, Innovation and Employment (MBIE), takes the lead on promoting international regulatory coherence, and the Ministry of Foreign Affairs and Trade which acts as lead advisor and negotiator on trade policy and provides advice on the process for entering into international treaties. The three authorities co-ordinate on different IRC areas: e.g on cross-cutting GRP and regulatory co-operation chapters in FTAs, representing New Zealand at international regulatory policy fora, and on contribution to benchmarking studies of regulation and the regulatory environment.

Sources: (OECD, 2018[1]) (OECD, 2016[2]).

While trade is a strong driver for IRC, an effective IRC narrative should go beyond the expected trade benefits. IRC has important broader benefits for policy makers, regulators and society across policy areas, for example via learning from foreign peers, or aligning approaches on common and cross-border policy challenges to strengthen the effectiveness of domestic regulation in achieving its policy objectives. Co-operation is also a cornerstone of effective market surveillance and regulatory enforcement. With the growing dematerialisation of flows transcending borders, regulatory co-operation across different jurisdictions is becoming critical to the identification of non-compliant behaviours, the detection of dangerous products and conducts and their remedies. From this perspective, IRC may help achieve other broader objectives such as safety, social and environmental.

The IRC policy/strategy should be evidence-based and acknowledge the key drivers, benefits, costs and challenges of co-operation. It should give priority to key partners for collaboration, taking into account the country's "dependence" on other countries (subject to sectors and / or policy areas) and account for IRC drivers and political economy. Typical IRC drivers include geographical proximity, economic interdependence, political and economic properties of potential partners (including relative size) and their like-mindedness, the maturity and proximity of the regulatory system, and the nature of regulation.

The IRC policy/strategy should account for the variety of IRC approaches. Different IRC approaches have different benefits and costs and may be more or less relevant depending on the sector/area under consideration. As their experience with IRC matures, policy makers should undertake more systematic *ex ante* and *ex post* assessment of their regulatory co-operation initiatives. They should develop a base of evidence on uses and impacts, relying on information collected via regulatory impacts assessment, *ex post* evaluation and data provided by international fora. This would help governments in updating the IRC policy/strategy over time based on evidence.

The IRC policy/strategy should also recognise that a level of unilateral adoption of international or of other jurisdictions' instruments may be warranted in sectors or policy areas where a country has accumulated less knowledge and expertise or where the country's limited activity may not warrant the necessary resources to develop its own approach. Opting to unilaterally recognise or uphold regulatory requirements issued by competent authorities in other jurisdictions can also be a flexible and rapid option for countries that can prove particularly useful during a crisis to quickly increase the supply and availability of goods and services. This has proved an important mechanism in the midst of the COVID-19 crisis to facilitate the trade of critical medical products and protective equipment.

Establish a co-ordination mechanism in government on IRC activities to build a consensus and common understanding on IRC and capitalise on relevant information on IRC practices and activities

IRC is part and parcel of the regulatory policy agenda and an important building block of regulatory quality. Nevertheless, it entails an ambitious rethinking of traditional domestic rulemaking processes. To ensure IRC is interwoven within the regulatory process and helps contribute best to domestic strategic objectives, the design and establishment of an IRC strategy requires the commitment of the regulatory oversight bodies. Yet its successful implementation is a whole-of-government endeavour involving different actors. It also requires a significant change in the administrative culture. As such, there should be dedicated staff strongly connected to the regulatory policy agenda with sufficient resources and influence to ensure maximum mainstreaming in the rulemaking practices of departments and regulators (Box 2.2).

There should be an IRC policy overseen, at least in its regulatory quality dimension, by the regulatory oversight bodies and capacities established in line with the 2012 Recommendation. These bodies have a key role to play to ensure the mainstreaming of IRC considerations in rulemaking practices, in the development of relevant guidance and in their systematic check during scrutiny work.

To ensure that countries develop an IRC policy and strategy in line with those impacted (country specific policy making community, regulators, businesses, affected communities, etc.), and in line with core regulatory policy principles, the oversight unit should highlight in any IRC guidance the importance of transparency, such as systematic publication of IRC documents, and promote wide consultation on the overall IRC strategy or its components. Public availability of the IRC policy/strategy can support governments in ensuring transparency and accountability about international co-operation efforts.

The successful implementation of an IRC policy/strategy is a shared endeavour across government. The entity responsible for the IRC strategy should pro-actively promote it across government and ensure appropriate linkages with other, related, policies and initiatives across government (i.e. trade and foreign policy). Typically, Foreign Ministries and overseas embassies have a role to facilitate IRC by providing access to networks, stakeholder and information, and often by co-ordinating participation in international organisations.

Enable an IRC conducive framework – i.e. raise awareness of IRC, build on existing platforms for co-operation, reduce anti-IRC biases and build in incentives for policy makers and regulators

Existing legal and policy documents and guidance on regulatory policy may generate obstacles for regulators to consider more systematically the international environment and engage in fruitful IRC. Updating these documents may help remove some of the unintended biases, embed stronger IRC incentive, and reduce legal and institutional impediments to co-operation. As an example, in 2018, Canada introduced amendments to the Red Tape Reduction Act to allow regulators to count reductions in administrative burden to businesses that occur in other jurisdictions as part of their one for one mechanism, should they result from a work plan under one of Canada's three formal regulatory co-operation tables.

In addition, guidance to regulators should incorporate IRC elements and guide regulators on how to embed IRC in regulatory management tools (see below). For example, such guidance could clarify the standard of international evidence to be used in the RIA process and help regulators identify the applicable international instruments. While such a standard is still to be developed and could be the object of further OECD work, relevant information to be collected by regulators include data from other jurisdictions and international fora on the challenges they seek to address (i.e. patterns, evolution over time, impacts on various populations, among other), and on policies, their use and impacts in other jurisdictions. There is a wide range of information sources that can be tapped on, including official government data, international organisations, peer reviewed academic work.

Regulators at various levels of governance know best what co-operation mechanisms exist in their own area. Nevertheless, there is an opportunity for national levels to support and leverage existing regulators fora and build a community of IRC practices and other regulatory policy topics, raise awareness about IRC tools, and identify training needs when relevant (Box 2.3).

Box 2.3. Communities of regulatory practices

Canada's Community of Federal Regulators (CFR) is a partnership of Canadian regulatory organisations at the federal level that aims to facilitate professional development, collaboration and advancement of the regulatory field. The community serves approximately 40 000 regulatory professionals who support Canada's regulatory lifecycle. The community is governed by a Deputy Minister Champion, two Assistant Deputy Minister Co-Champions and representatives from each of the departments and agencies providing financial support to the community, responsible for setting direction and areas of focus for the community in conjunction with the CFR Office. The CFR has an awards system which incentivises IRC through a specific category to Excellence in Regulatory Co-operation & Collaboration. This award recognises a regulatory initiative that has demonstrated success through a collaborative or co-operative endeavour with another organisation and/or jurisdiction.

New Zealand 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. G-REG focuses on developing people capability, organisational capability, and building a professional community of regulators. It is a network for all regulators in the public sector, whether at central or local government.

The Chair in Regulatory Practice enables international regulatory best practice and knowledge to be disseminated to G-REG and the wider regulatory community (through blogs, seminars and guest lectures), so New Zealand can learn from the rest of the world. G-REG's peer learning framework incorporates an international element by, among other things, focusing on the need to minimise the potential for unintended negative impacts of regulatory activities on regulated entities or affected supplier industries and supply chains, which are often international or regional.

Sources: (OECD, 2018[1]) (OECD, 2016[2]).

Embedding IRC throughout the domestic rulemaking

IRC has important implications for the activities of regulators and of their oversight bodies. It requires a change in the regulatory culture towards greater consideration of the international environment in the rule-making process. This involves the more systematic review and consideration of foreign and international regulatory frameworks of relevance when regulating and the assessment of how regulatory measures impact and fit within the broader cross-border management of the issue to address. There is a need to consider IRC in all phases of the rulemaking cycle, from the initiation of new laws and regulations to their implementation, evaluation and revision. In this perspective, the regulatory management tools (Regulatory Impact Assessment, stakeholder engagement and *ex post* reviews of regulation) provide important entry points in the rule-making process to consider the international environment in the development and revision of laws and regulations.

Gather and rely on international knowledge and expertise

At a minimum, Governments should act in accordance with their international treaty obligations, which infers appropriate co-ordination across government and a clear information base on such commitments.

In developing laws and regulation, policy makers and regulators should gather evidence and expertise that may go beyond their own jurisdiction. It is rare that a new issue arises without any other jurisdiction and international organisation having had to deal with it. Gathering the intelligence around the incidence of the issue at stake and the approaches adopted by others can help build the body of evidence on the area under consideration, identify a greater range of options for action, and develop the narrative around the chosen measure. This can be done as part of the routine practice of gathering information during *ex ante* RIAs and *ex post* evaluations. It can also be done by engaging with relevant experts and public and private sector representatives and practitioners from around the world, complementing traditional stakeholder engagement (see below). For example, Turkey's 11th Development Plan (2019-2023) includes a section on National Capacity for International Cooperation that calls for exchanges with experts from other countries for the preparation of legislation dealing with regulating financial and technical issues (Presidency of the Republic of Turkey, 2019[3]).

Consider existing international instruments when developing regulation and document the rationale for departing from them

International normative instruments are usually the results of significant evidence gathering and consensus building (including scientific). Using them in domestic legislation provides a strong driver for regulatory consistency internationally therefore reducing the opportunities for arbitrage and the costs for the regulated entities of having to comply with multiple requirements. Binding instruments should be embodied in domestic law and regulations depending on the process set out to that effect. With regard to non-binding instruments, they should be taken into account and, when specific circumstances require departing from them, this should be justified based on evidence. For examples of domestic requirements to consider international instruments, see Box 2.4. Traditional regulatory management tools such as RIA or stakeholder engagement can help in the assessment of the benefits and costs of pursuing a unilateral approach versus relying on an existing international solution.

The principle of use of relevant international standards is already strongly embedded in the WTO SPS and TBT agreements from a trade impact perspective. Indeed, the use of international technical standards is particularly relevant in the development of domestic standards, technical regulations and conformity assessment procedures (sometimes referred to as STRACAP) to facilitate trade. Nevertheless, the use of relevant international instruments merits to be extended beyond the technical standard area and to apply more broadly. Indeed, in areas not directly related to trade, use of international instruments in decision making and the harmonisation of international approaches allow to avoid free riding behaviour and limit costs on businesses and citizens – this is typically the case in the tax area or corruption. Such a principle is valid for all jurisdictions but hold particularly true for those that have directly contributed to the development of such instruments.

For maximum interoperability gains, incorporation by reference of international instruments[1] should be the preferred option when legally feasible. However, its limited use so far may well reflect a perceived lack of appropriateness of international instruments to specific country situations and the limited confidence of domestic regulators that these instruments may (without alteration) help them achieve their policy objectives. Hence this principle goes hand in hand with the need for policy makers and regulators to actively participate in international fora where such instruments are being developed (see below).

The 2018 *Regulatory Policy Outlook* highlights the importance of facilitating the access to applicable international instruments, whether legally binding or not, through centralised databases (by sector/policy areas or other) (OECD, 2018[4]).

Box 2.4. Embedding international instruments in domestic regulation

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. If a regulatory option involves establishing or amending standards in areas where international standards already apply, the proponent should document whether (and why) the proposed standards differ from the international standard.

Mexico has various provisions encouraging the adoption of international standards, mostly bearing on technical regulations and standards. If international standards do not exist, the consideration of foreign standards is encouraged, in particular standards of two major trading partners, the United States and the EU. To support regulators in this obligation, a guidance document on how to embed international standards in domestic technical regulations or standards was developed, and some examples of international and foreign standards are listed in the legal obligation.

The **New Zealand** Government Expectations for Good Regulatory Practice apply to all New Zealand's regulatory systems and therefore to all kinds of regulatory measures and actors. This provides that "the government believes that durable outcomes of real value to New Zealanders are more likely when a regulatory system … is consistent with relevant international standards and practices to maximise the benefits from trade and from cross border flows of people, capital and ideas (except when this would compromise important domestic objectives and values)". Regulatory agencies are expected to undertake "systematic impact and risk analysis, including assessing alternative legislative and non-legislative policy options, and how the proposed change might interact or align with existing domestic and international requirements within this or related regulatory systems".

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 Co-operation 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. The scope of this requirement is limited to the sectoral work plans that the United States has agreed to in Regulatory Cooperation Councils.

Source: (OECD, 2018[1]) (OECD, 2016[2]).

Assess impacts beyond borders

At a minimum, governments should ensure that their rulemaking takes into account the potential impacts on parties outside of the national boundaries. The Regulatory Impact Assessment process provides an opportunity to do so, in particular through the assessment of trade impacts and of impacts on foreign jurisdictions. But while countries have started accounting for the trade impacts of their rulemaking (Box 2.5), the broader consideration of impacts of their regulatory action beyond their own borders (and potentially therefore of the second round effects) remains limited. To be effectively implemented, this

principle goes hand in hand with the need to provide opportunities for consultation with external partners on the development of regulation (see below).

Box 2.5. Assessing Trade Impacts through Regulatory Impact Assessment Procedures

- **Review of International Regulatory Co-operation of Mexico** (OECD, 2018[1]): Mexico introduced a trade filter in the RIA process that provides an opportunity to assess the impacts on exports and imports of a regulatory measure and triggers the involvement of the Trade Ministry for notification to WTO. Through nine detailed questions, this trade filter allows regulators to identify potential trade impacts of draft regulations. If such an impact is found, a specific trade RIA is conducted and the draft measure is notified to the WTO, thus opening the possibility to gather feedback on the measure from other WTO members and potentially stakeholders therein.
- **Review of International Regulatory Co-operation of the United Kingdom** (OECD, 2016[2]): the UK introduced a new RIA template in 2018, including a new question related to the impacts of UK regulations on international trade and investment (i.e. *Is this measure likely to impact on trade and investment? Yes/No*). This new template was trialled in 2019. Based on the first set of responses to this template, the UK Department of International Trade, Better Regulation Executive and Regulatory Policy Committee are working together on how to refine the methodologies to support departments in measuring the trade impacts of their draft measures.

Source: (OECD, 2018[1]) (OECD, 2016[2]).

Engage actively with foreign stakeholders

Engagement of foreign stakeholders in regulatory processes – as an integral part of regular stakeholder engagement most commonly focused on domestic actors – can help raise awareness for regulatory approaches in other jurisdictions and provide information on enforcement consequences of selected regulatory options, including their impacts on trade and the practical effects of maintaining the same or different regulatory approaches. In practice, it is necessary but not sufficient to rely on open, non-discriminatory engagement processes domestically, for example via open-access internet platforms accessible to all. Countries should make an extra effort to involve foreign stakeholders. This can take the form of specific communication through business platforms or chambers of commerce.

Compulsory notification of draft regulations to international fora provides an important means by which to alert and draw inputs from foreign stakeholders. The WTO TBT and SPS Agreements provide such opportunity through the single central government authority responsible for notifications (OECD/WTO, 2019[5]) (Karttunen, 2020[6]). However, other notification processes exist in various sectors and regional platforms, such as for example notification obligations of environmental impact assessments under the UNECE's Convention on Environmental Impact Assessment in a Transboundary Context (Espoo Convention) (Kauffmann and Saffirio, 2020[7]). Such notification processes can usefully complement the mechanisms established by regulatory oversight bodies and need to feed in and work in synch with those mechanisms.

Embed consistency with international instruments as a key principle driving the review process in ex post *evaluation and stock reviews*

The full extent of the impacts of a regulatory measure is only known after its implementation. Therefore, *ex post* evaluation provides a critical opportunity to identify regulatory divergences with international frameworks as well as their trade and other potential impacts. Evaluation and stock reviews can be used more systematically to map the state of international knowledge on the regulated area and take stock of new approaches adopted by other jurisdictions that may have proved successful. It should analyse the costs (and benefits) of diverging from international practice if such a choice was made *ex ante* and identify the unintended divergences (in design and enforcement) that may be source of frictions (Box 2.6).

Given the potential relevance of the findings of such *ex post* evaluation for other jurisdictions and the international community, the results of *ex post* evaluation should be made public and available to relevant partners and international fora to the extent possible.

Box 2.6. Evaluations and stock reviews as opportunities to identify divergences internationally and gather new intelligence

In the updated version of **Canada**'s Directive on Regulation regulators must, as part of stock reviews, identify new opportunities to reduce regulatory burdens on stakeholders through regulatory co-operation activities

In **New Zealand**, regulatory agencies are expected to "periodically look at other similar regulatory systems, in New Zealand and other jurisdictions, for possible trends, threats, linkages, opportunities for alignment, economies of scale and scope, and examples of innovation and good practice".

Source: (OECD, 2018[1]) (OECD, 2016[2]).

Assess ex ante *the co-operation needs to ensure appropriate enforcement and streamline "recognisable" procedures*

Given the impacts of digitalisation and the fragmentation of value chains, it is likely that appropriate enforcement of any rule will require co-ordination with foreign jurisdictions, be it to gather relevant information on the market structure or to solve cases or find remediation when applicable enforcement authority or mechanism is located outside of the jurisdiction. Such enforcement co-operation needs are better estimated and foreseen early in the rule-making process in order to avoid gaps in the applicability of rules. More broadly, enforcement co-operation can be facilitated by ensuring that regulators have the appropriate tools/ legal authority to co-operate and take action provided by their domestic legislation (OECD, Forthcoming[8]).

Conformity assessment procedures allow companies to demonstrate compliance with regulatory requirements. When the foundations of mutual recognition and equivalence mechanisms, they are a key element to facilitate international trade and provide confidence that traded goods and services are fit for purpose. However, when different and not recognised across countries, they can add substantial costs to traders and limit the flow of quality products. Improving their quality domestically and facilitating recognition of trustworthy partners' conformity assessment procedures can help regulators reduce their load domestically and limit compliance costs for regulated entities.

Co-operating internationally (bilaterally, plurilaterally & multilaterally)

Unilateral actions of countries to embed greater consideration of the international environment in domestic rulemaking and map and ensure greater consistency with relevant international frameworks provide essential building blocks of IRC. They help avoid the unnecessary regulatory divergences through better informed rulemaking and foster the mutual knowledge and confidence needed across jurisdictions. Stronger forms of bilateral, regional or international co-operation approaches are however needed (and de facto exist) to lay the ground of institutionalised and continuous collaboration and of greater coherence in regulatory matters. The modalities of international co-operation will depend on the legal and administrative system and geographic location of the country, as well as on the sector or policy area under consideration.

Co-operate with other countries to promote the development and diffusion of good practices and innovations in regulatory policy and governance

Good regulatory practices are the foundations of trustworthy regulatory institutions and frameworks. They are also the building blocks of stronger regulatory co-operation approaches and mechanisms. Countries should continue co-operating within the OECD and other relevant frameworks at a global scale to advance the knowledge and understanding of good regulatory practices, establish common language on key regulatory policy terms and concepts, and strengthen the confidence needed across jurisdictions for stronger forms of IRC. Co-operating internationally on good regulatory practices can be the opportunity for governments both to learn from others' experiences and to build capacity of other countries with less developed good regulatory practice frameworks.

Contribute to international fora which support regulatory co-operation

Governments are encouraged to participate plainly in international organisations where science is discussed, practices shared, and common approaches and international instruments developed. They are usually consensus based and provide an opportunity to both collect evidence and gather expertise on issues of common interest and influence international rulemaking. In this perspective, it may be useful for countries to build a comprehensive mapping of all the international organisations that they contribute to. Where resources may be limited, sharing the burden of active participation among likeminded countries may help address the capacity challenges. At a minimum, continuous surveillance of the normative activity of international organisations will help identify when issues of relevance to a specific jurisdiction are being raised.

Beyond the active participation in the technical work of international organisations, countries could further support the use of good regulatory practices at the international level. Through their membership or participation in technical committees, national jurisdictions have a role to play in sending consistent messages and working towards the development of more transparent, evidence based, co-ordinated rules and no more burdensome than necessary to achieve legitimate policy objectives. They can, in particular, support greater engagement of a wide variety of stakeholders (both national and international) in the normative activity of international organisations, more *ex ante* and *ex post* evaluation of international instruments, stronger implementation and co-ordination of joint rules. The work of the Partnership of International Organisations for Effective International Rulemaking, spearheaded by the RPC, aims to provide a unique reference base on the practical steps that international organisations can take in this direction (OECD, 2021 forthcoming[9]).

The 2018 *Regulatory Policy Outlook* identifies a disconnect between the domestic and the international rulemaking processes, which generates inefficiencies. Better use of regulatory management tools across domestic and international levels may help bridge this disconnect. For example, greater monitoring and more regular evaluation of the application of international instruments at domestic level would help make the case for their use and inform domestic regulators of their expected and realised impacts. It would also

help inform the revision of international instruments if evaluation results were shared more systematically across levels of government.

Use mutual recognition in combination with international instruments

In areas where regulatory harmonisation may not be needed and it is recognised that various regulatory approaches may achieve similar objectives, the mutual (or even unilateral) recognition of the other jurisdiction's rules, conformity assessment procedures or enforcement results may avoid undue costs to business and enforcement clogging. Experience shows however that such recognition is most easily achieved among like-minded countries, and made less costly and facilitated by coherence and convergence in the underlying rules.

Align IRC expectations across various policy instruments, including trade agreements

Trade agreements are increasingly used as a mechanism to promote considerations on regulatory quality and co-operation. Most recently, a number of agreements incorporate standalone chapters focused on GRPs, IRC or both. These chapters can represent an important political commitment and serve to advance common understanding and use of regulatory co-operation and regulatory management tools across jurisdictions.

It is important though that consistency with the international commitments of countries in the same field is respected, in particular the 2012 Recommendation and the APEC-OECD Checklist. Where such standalone chapters create special standing bodies to oversee the implementation of these chapters and/or promote regulatory co-operation, countries should ensure that they effectively and efficiently deliver on their purpose avoiding overlaps with other bodies or the risk of co-operation fatigue. In particular, these bodies should provide an opportunity to bring together critical players working on improving regulatory effectiveness across policy communities in each country. An example is provided by the CETA (Box 2.7).

Box 2.7. The EU-Canada Comprehensive Economic and Trade Agreement (CETA)

The CETA, provisionally in force since September 2017, includes a mechanism to develop voluntary regulatory co-operation between the Parties, called the Regulatory Cooperation Forum (RCF). Co-operation in the framework of the RCF is voluntary and driven by the Parties' willingness to identify areas of common work, without prejudice to their ability to continue developing their own regulatory, legislative and policy initiatives.

The RCF facilitates regulatory co-operation between the Parties through its following functions:

- Provide a forum to discuss regulatory policy issues of mutual interest that the Parties have identified through, among others, consultations with interested stakeholders;
- Assist individual regulators to identify potential partners for co-operation activities;
- Review regulatory initiatives, whether in progress or anticipated, that a Party considers may provide potential for co-operation;
- Encourage the development of bilateral co-operation activities and, on the basis of information obtained from regulatory departments and agencies, review the progress and achievements and share the best practices of regulatory co-operation initiatives in specific sectors.

The RCF is co-chaired by EU and Canadian officials overseeing bilateral trade and regulatory co-operation. Although the RCF is set up as part of CETA, it also covers co-operation activities that are not directly related to trade between the Parties and that aim at enhancing administrative efficiency

and/or at tackling at bilateral level policy issues that transcend national or continental borders. Individual regulators co-operating under the framework of the RCF cover areas such as consumer protection, public health, digital economy or animal welfare.

To inform their regulatory co-operation activities, both Parties carried out consultations in 2018 in order to collect views of European and Canadian stakeholders for potential topics where EU and Canadian regulators could meaningfully co-operate. On this basis, five fields of co-operation were identified at the first meeting of the RCF in December 2018: i) cybersecurity and the internet of things; ii) animal welfare – transportation of animals; iii) re-testing of cosmetics-like products; iv) co-operation on pharmaceutical inspections in third countries; and v) exchange of information on the safety of consumer products; and a work plan adopted.

Source: (Kauffmann and Saffirio, 2021[10]).

Note

[1] Incorporation by reference refers to the incorporation of international instruments in domestic instruments by means of a reference to one or more international instruments, or the replacement of entire text in the drafting of a code or regulation (OECD, 2013[11]).

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