

Executive summary

A wide variety of international organisations (IOs) are involved in promoting international regulatory co-operation (IRC) through their standard-setting and rule-making activities. The United Nations is very active in this area: UN bodies make up half of the IOs surveyed for this study. But new forms of organisation have also flourished alongside the traditional model of inter-governmental organisations (IGOs), with different legal standing and memberships. Private standard-setting organisations and trans-governmental networks of regulators (TGNs) are for instance playing an increasing role.

IOs are actively involved in exchange of information, data collection and development of norms, standards and best practices. By contrast, IOs are much less involved in the downstream activities of the rule-making process, i.e. enforcement, dispute settlement and crisis management. In most cases, international co-operation through IOs consists of sharing scientific or technical information; developing common regulatory goals, strategies or policies; and adopting common international standards. More stringent forms of co-operation such as mandatory harmonisation of regulations, regulatory procedures or inspections are less common. This suggests that IO members are willing to share experience and develop a common language, but are reluctant to give up autonomy and sovereignty for stronger outputs of IRC.

IOs are organised in very diverse ways. There are differences in constituency; for example, IGOs are state led, with different geographic scopes, while TGNs and private standard-setting organisations involve a wider variety of state and non-state actors. There are also differences in the resources of the supporting secretariat. For a number of IOs, the secretariat is quasi non-existent (some TGNs), while others (typically those with important regulatory powers or financial instruments) have secretariats exceeding 1 000 staff and a budget of over EUR 500 million. Beyond these differences, IOs share strong common features in creating the international landscape of rules and standards: the pursuit of consensus in decision-making; the extension of traditional membership to new geographic zones and non-governmental actors; the broadening of funding sources and, to some extent, the roles of the secretariat.

There are three broad approaches to IO rule-making: legally binding requirements that are meant to be directly binding on member states; non-legally binding instruments that are given a binding value through transposition in domestic legislation or recognition in international legal instruments; and statement of intent or guidance. IOs primarily rely on non-legally binding tools, in particular policy instruments, guidance and standards. They are the main instruments of TGNs and private standard-setters. They are also widely used by IGOs and secretariats of conventions, in combination with a variety of legal instruments. However, there is no single and widely accepted definition for instruments adopted by IOs. In particular, what constitutes a legally binding decision, a recommendation, technical standards, a memorandum of understanding, a political declaration and guidance or a best practices document may vary from one IGO to another with the same terms used to describe different realities within the institutional context of

each IGO. This divergence in understanding may create confusion, in particular on the action of IGOs whose “products” are more varied than those of private standard-setters.

Only a limited number of IOs systematically track the implementation of their instruments. This is a critical point, since tracking implementation provides the evidence needed to support the evaluation of the influence of the IO (and, ultimately, its impact), as well as the relevance of the instrument and any need for revision. When IOs do track implementation, approaches vary across the type of organisation and also reflect the legal nature of the underlying instrument. The most common approach is to rely on reporting (mostly voluntary). However, several secretariats of conventions rely more heavily on mandatory mechanisms, reflecting the legally binding nature of their instruments. TGNs and private standard-setting organisations tend to place less emphasis on monitoring implementation, in line with the largely voluntary nature of their instruments.

IOs make limited use of evaluation tools. Most IOs mainly monitor the use of their instruments rather than the outcome of this use, largely because of methodological challenges and lack of resources. IOs – notably those relying on non-legally binding instruments – rarely have the direct control and information mechanisms to carry out evaluation, as these are mainly at the domestic level. Any further consideration of IO evaluation practices will therefore need to include the respective role of IOs and of their membership and the resource implications. The potential benefits of greater *ex ante* and *ex post* evaluation may well be significant, in particular for legally binding instruments and policy instruments transposed in domestic legislation. The consistency of these norms with domestic regulatory frameworks needs to be understood early on in the rule-making process and continuously ensured. Non-binding instruments could also benefit from greater evaluation, as positive evidence of their impact could build a case for their implementation.

On the other hand, most IOs have mechanisms for collecting input and feedback from stakeholders to ensure the quality of their standards and rules. In practice, however, the ways IOs engage stakeholders differ significantly and remain far from consistent and systematic. There are important challenges to ensuring balanced and fair engagement rules at the international level. The limited capacity of certain groups of stakeholders to proactively engage with IOs and the fact that they are rarely organised at the international level further intensify the difficulty. In response, several IOs have undertaken efforts to reform and enhance their engagement with stakeholders as part of their rule-making activity. While the OECD survey was not detailed enough to capture the quality of IO engagement processes, the results show that stakeholder engagement provides a unique opportunity for IOs to learn from each other and test the effectiveness of their respective approaches.

Most IOs operate in institutionally crowded areas. The presence of many IOs (international and regional, public and private) in the same regulatory space means members can benefit from the variety of projects and competencies. However, it also raises challenges of overlapping constituencies and mandates. Fragmented approaches may lead to confusion on applicable rules, inconsistencies among standards, and wasted resources. Co-ordination among IOs is often carried out in an opportunistic manner, and largely consists of information exchange or joint meetings. When more formal co-operation mechanisms are adopted, they tend to concern legally binding instruments. This is an area where better understanding of the regulatory landscape and early and more systematic exchange of information among IOs on future instrument development would be beneficial. Such efforts would need to involve both the IOs and their constituencies.



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