Chapter 5

How do international organisations ensure the quality of their rule-making process?

International organisations have, over the years, developed processes and practices to support the quality of their rule-making. However, systematic evidence on the use of different regulatory quality disciplines in international rule-making is lacking. In order to fill this information gap, the 2015 OECD Survey of International Organisations has collected information on the stakeholder engagement and evaluation practices of international organisations. This chapter provides an overview of the extent to which surveyed international organisations engage stakeholders and carry some forms of ex ante or ex post *evaluation of the norms and standards that they develop.*

At the domestic level, regulators have a range of tools at their disposal to ensure the quality of the regulatory processes. In particular, the Recommendation of the Council on Regulatory Policy and Governance adopted in 2012 by OECD members highlights that "regulatory agencies should be required to follow regulatory policy including engaging with stakeholders and undertaking regulatory impact assessment when developing draft laws or guidelines and other forms of soft law". (OECD, 2012, Principle 7.5)

Similarly, OECD (2014) underlines that international organisations (IOs) have, over the years, developed processes and practices to support the quality of their rule-making – such as consultation mechanisms and impact evaluation. However, evidence on the active use of these regulatory disciplines in international rule-making is limited. More systematic exchange of information and experience would enable IOs to capitalise on lessons learnt and maximise the potential of existing governance arrangements and instruments. Ultimately, it would help them garner greater legitimacy and accountability in their rule-making role, in particular when the international norms that they develop are meant for adoption in national legislation. Box 5.1 provides the specific case of IFAC's governance and practices to ensure the quality of standards.

Box 5.1. **Ensuring the quality of standards, the case of IFAC**

IFAC supports four independent standard-setting boards (SSBs) in the areas of: auditing and assurance, education, ethics and public sector accounting, respectively the International Auditing and Assurance Standards Board (IAASB), International Ethics Standards Board for Accountants (IESBA), International Accounting Education Standards Board (IAESB), and the International Public Sector Accounting Standards Board (IPSASB). While IFAC shares a similar governance structure with the other IOs, the development of standards is undertaken by these four independent SSBs.

The SSBs are set up under IFAC authority and do not have a separate legal status. IFAC provides operational, administrative and financial support to the SSBs. However, they operate and develop standards independently of IFAC. The composition, terms and operating procedures are established for each SSB in their own terms of reference.

The standard-setting process for these SSBs is subject to oversight by the Public Interest Oversight Board (PIOB)—for three of the SSBs—and the Public Interest Committee (PIC)—for public sector accounting. The PIOB and the PIC are independent from IFAC Members and staff. The PIOB must approve that the SSBs have followed due process before the adoption of each standard, including through project proposals, issue papers, consultation papers (where appropriate), exposure drafts (with sufficient comment period), comment letters posted to the website, final standards being approved only after extensive consideration of comments, and a stated basis for conclusions. The PIC reviews and provides recommendations and comments on the same set of topics.

For the SSBs subject to PIOB oversight, a Monitoring Group comprised of international financial institutions and regulatory bodies related to international audit standard setting and audit quality monitors the implementation and effectiveness of these arrangements, as well as the execution by the PIOB of its mandate. The Members of the Monitoring Group are the Basel Committee on Banking Supervision, European Commission, Financial Stability Board, International Association of Insurance Supervisors, International Organization of Securities Commissions, International Federation of Independent Audit Regulators, and the World Bank. The Monitoring Group also performs other tasks to ensure the independence of the bodies operating in the IFAC framework, in particular by appointing Members of the Public Interest Oversight Board (www.ipiob.org/index.php/piob-oversight/standard-setting-process).

Source: IFAC.

Stakeholder engagement

The 2015 Regulatory Policy Outlook notes the growing attention of countries to stakeholder engagement in making, implementing and reviewing laws and regulations. It underlines that "[t]he central objective of (…) ensuring that regulations are designed and implemented in the public interest can only be achieved with help from those subject to regulations". Stakeholder engagement is seen as both contributing to improving the quality of the rule-making process by providing policy makers with the evidence needed for their decisions and as a fundamental determinant of ownership and trust in government.

Figure 5.1. **How frequently does your organisation use the following procedures to obtain input from stakeholders into its standard-setting and other IRC activities?**

50 respondents
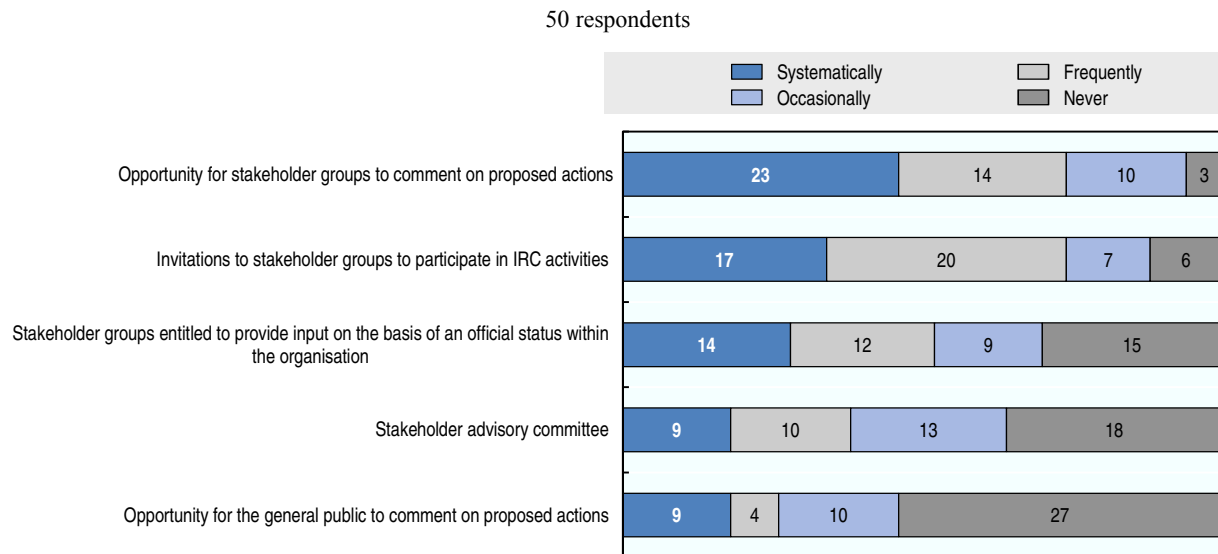
Source: OECD Survey of International Organisations, 2015.

Some IOs have enshrined stakeholder engagement in their membership by allowing it to extend to the various members of society that are affected by the activities of the IO – this is reflected in the IO profiles at the end of this report and in Table 3.1. It is particularly the case of trans-governmental network of regulators (TGNs) and international private standard-setting organisations, whose membership may include industry, civil society and other IOs. Most IOs have set up specific standing bodies or processes to engage stakeholders (in a non-decisional manner) at key points in the development of their instruments. It is illustrated by the answers to the survey that specify that stakeholder engagement practices (as defined in Figure 5.1) mainly take place in substantive committees and working groups, and much less in high governing bodies. A number of IOs, mostly inter-governmental organisations (IGOs), leave the responsibility of engaging stakeholders to their Members.

Regardless of their membership, most IOs have put in place mechanisms to collect inputs and feedback from stakeholders on their standard-setting and international regulatory co-operation (IRC) activities (Figure 5.1). This is in line with the existing literature on the subject.[1] In the overwhelming majority of cases (47), comments are received from specific stakeholder groups. This finding reflects what can be observed in

domestic contexts (OECD Regulatory Policy Outlook, 2015). IOs frequently manage which stakeholder groups are allowed to comment, by specifically inviting particular groups (44 IOs). By contrast, less than half of the IOs offer a process broadly open to the public. This finding may reflect the fact that IOs are relatively remote from the field and may find difficult to engage directly with the public. They rely more heavily on organised groups than individuals. The survey however does not cover the stakeholder engagement practices that may be carried out by IO members directly with the public on IO instruments.

In two thirds of the cases, stakeholders groups are entitled to provide inputs because they enjoy an official status in the organisation and / or serve on specific advisory committees. For instance, there are 3 standing non-governmental stakeholders with consultative status within the OECD: the Business and Industry Advisory Committee, the Trade Union Advisory Committee, and OECDWatch.[2] These provide an interface for business, labour organisations and non-governmental organisations (NGOs) respectively. IMO has granted to date consultative status to 77 international NGOs, including associations representing maritime industries and environmental interests (OECD, 2014). In the CDB, indigenous peoples and local community groups enjoy a special status that enables them to provide inputs on matters relevant to their groups such as on the protection of traditional knowledge.

Figure 5.2 displays the use of the different procedures to obtain inputs from stakeholders by type of main activity of IOs (the classification of IOs according to the type of main activity is available in Annex A). According to this classification, IOs mainly engaged in purely soft activities – production of consensual framework and exchange of information – tend to use fewer stakeholder engagement mechanisms than the total sample. By contrast, IOs mainly engaged in accreditation services, in the production of technical standards and in development of legally-binding tools use these mechanisms more systematically. This is confirmed by an analysis by nature of IOs: secretariats of convention, which tend to have more legally-binding tools, also tend to engage stakeholders more systematically. IGOs engage less with stakeholders, in particular with the general public, than the overall sample.

Nonetheless, the general feeling conveyed in the annual meetings of international organisations organised by the OECD in 2014-16 is that stakeholder engagement is complex and resource-consuming. Engaging the right stakeholders to ensure balanced and fair rules and avoid capture is not an easy undertaking. 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 challenge. The capacity of various stakeholder engagement practices to deliver improved IO rule-making also remain a largely unknown area. In addition, even within the same IO, practices in terms of mechanisms, openness and frequency of consultation may widely differ across departments/programmes, making it difficult to provide a global view of IOs.

In the face of these challenges, the question of how IOs ensure the quality of their consultation process, i.e. how they ensure that the process is fair, inclusive and effective in helping to achieve its objectives, is of critical relevance and an area where further exchange of information among IOs would facilitate their efforts. A number of IOs have made some efforts to reform and to enhance their engagement with stakeholders to make it more systematic, homogeneous across the IO, transparent and accountable. In the case of the IMO, any organisation seeking consultative status must demonstrate expertise and the capacity to contribute to the work of IMO, within its field of competence. It must also

show that it has no access to the work of IMO through other organisations in consultative status and that it is international in membership, with its members geographically diverse, usually from more than one region (OECD, 2014). WHO is developing a comprehensive policy to handle stakeholder engagement. This new framework aims to support increased transparency and accountability of stakeholder engagement practices by establishing a register of engaged partners, by institutionalising an annual report on implementing the new framework, and by providing specific guidance.

Figure 5.2. **Mechanisms of stakeholder engagement by type of main activity of IOs**

50 respondents
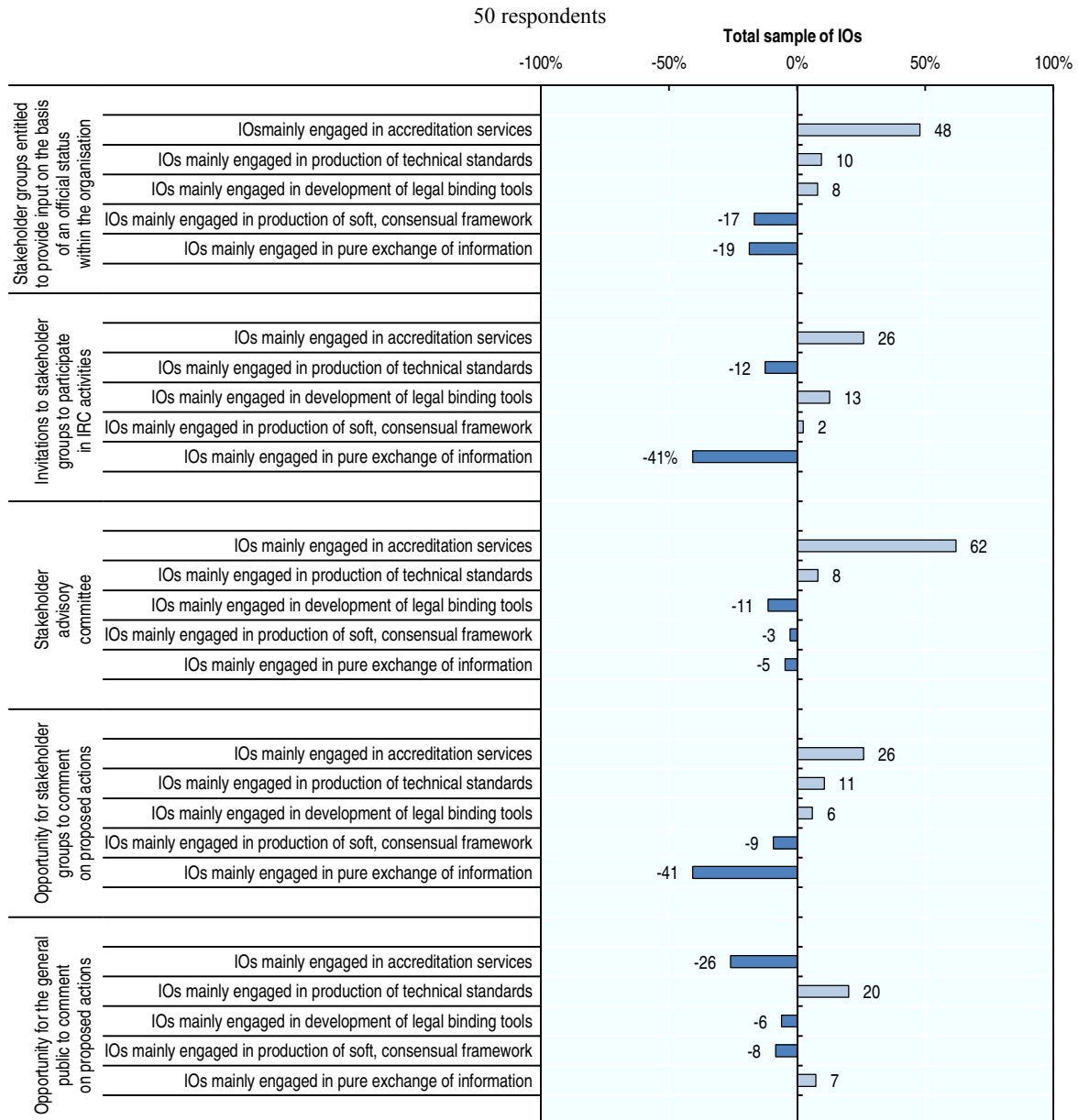
Notes: The figure considers both the IOs that answered "systematically" and "frequently" and compares the averages for the specific IO groups to the average for the total sample of IOs. In this figure, the EC is included in the category of closed-membership IGOs.

Source: OECD Survey of International Organisations, 2015.

Evaluation mechanisms

The 2015 OECD Regulatory Policy Outlook highlights the value in assessing the effectiveness of laws and regulations once they are in force. It is only after implementation that their full effects and impacts can be assessed. It is also only through regular reviews that laws and regulations can be assessed for their continued relevance.

Figure 5.3. **How frequently does your organisation employ the following procedures to ensure the quality of its standard-setting activities?**
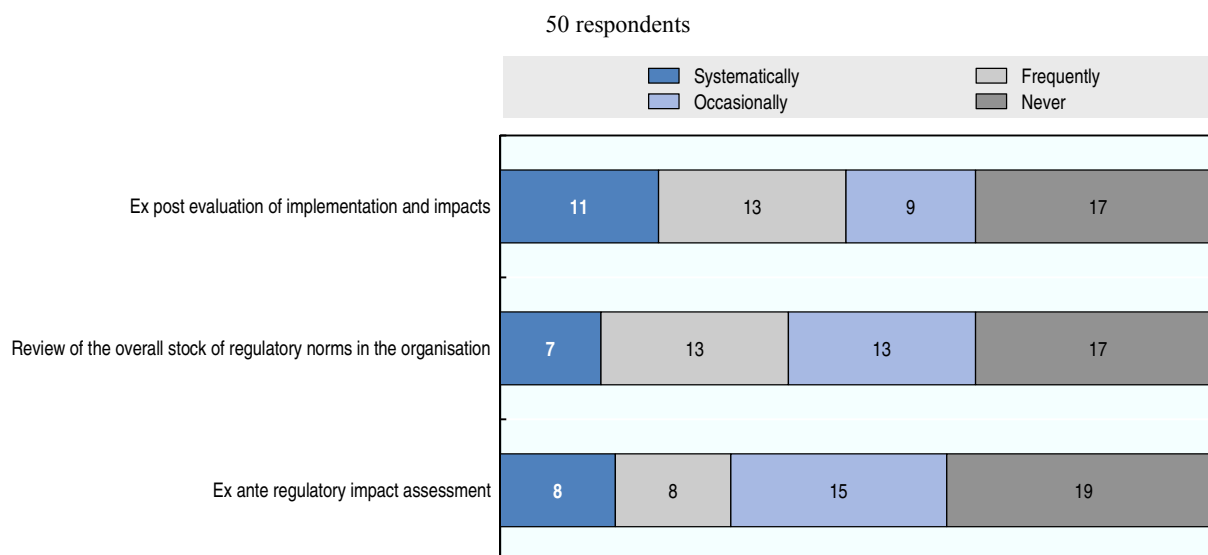
Source: OECD Survey of International Organisations, 2015.

Evaluation procedures to ensure the quality of standard setting activities are less widely used by IOs than stakeholder engagement (Figure 5.3). *Ex post* evaluation of implementation and impacts is slightly more systematically used than reviews of the regulatory stock and *ex ante* regulatory impact assessment. Open-membership IGOs and trans-governmental networks resort less to evaluation mechanisms than the other types of IOs, in particular the closed-membership IGOs and the secretariats of conventions (Figure 5.4). This is likely to be a function of the formality of the instruments used (secretariats of conventions) and the practicality of the evaluation process in smaller memberships ("closed" IGOs).

Generally, IOs and their constituencies acknowledge the need to review the impacts of their instrument – in order to assess their continued relevance and / or the need for their revision. This was a clear take away from the second meeting of international organisations (Paris, 2015).[3] The survey results also demonstrate this commitment. In particular, a number of IOs, including OIML, report some sort of periodic review of instruments to decide whether these should be confirmed, revised, or withdrawn. CBD reports conducting mandatory reviews of the effectiveness of its instruments (the protocols). New OECD Recommendations systematically include monitoring and review clauses (OECD, 2014). Box 5.2 provides additional insights into the evaluation practices of selected IOs.

Box 5.2. **Evaluation practices in selected IOs**

OSCE implements review processes on the occasion of yearly implementation assessment meetings such as the Annual Implementation Assessment Meeting (AIAM) which evaluates the way the provisions of the Vienna Document 1999 are implemented.

UPU implements *ex ante* and *ex post* analyses of certain initiatives/projects undertaken by the organisation by conducting surveys with member countries.

UNDP Water and Ocean Governance Programme carries out independent evaluations of all its projects that include efforts to create and/or strengthen national and regional regulations pertaining to the water and ocean resource management. In particular, these evaluations assess the quality of the regulations that have emerged from such projects.

In UNECE most evaluations concern programmes or sub-programmes rather than the implementation or impact of a single legal instrument, standard or convention.

Every three years NATO implements *ex post* review of standardisation documents to ensure technical and operational adequacy. The review of a standardization document does not only concern its substantial operational, material and administrative content; rather, it considers also the terminology and national reservations. If a standardisation document is found to be still adequate then the date of the review revalidating the document is recorded. If it requires changes then it should be amended (for minor changes) or revised (for major changes). Amendments lead to a new version of the standard and standards related documents, but the covering document remains unchanged; whereas revisions lead to new editions of the standardization document and related documents.

Among the IOs that carry out systematic assessment of their instruments, the EC, as a supra-national regulator, clearly stands out. All policy decisions with significant impacts are subject to impact assessment (some 100 a year).[1] *Ex post* evaluations are carried out systematically (some 120 a year).[2] Reviews of the overall stock of regulation have been conducted twice.[3]

1. http://ec.europa.eu/smart-regulation/impact/ia_carried_out/cia_2014_en.htm.

2. http://ec.europa.eu/smart-regulation/evaluation/search/search.do.

3. http://ec.europa.eu/smart-regulation/refit/index_en.htm.

Source: OECD Survey of International Organisations, 2015.

Evaluation is a challenging task for IOs. According to the survey results, the resources for evaluations are an important concern for many IOs (both in terms of staff time dedicated to such activities and necessary funds), which likely explains the above result of less evaluation by those IOs which typically have smaller secretariats and fewer resources (trans-governmental networks) or very large constituencies (open-membership IGOs). Additional challenges, highlighted during the annual meetings of international organisations held by the OECD point to the fact that IOs do not have all the needed control and information levers, which are mainly at the domestic level, to carry out monitoring and evaluation. In a number of cases, they do not have the direct responsibility for implementation of their instruments. Availability of information is also problematic. The methodological issues are not trivial either. For instance, it can be quite complex to disentangle the effects of the instruments of a single organisation when several IOs operate in the same field. IOs with a more restricted membership may have impacts that go beyond their formal members, thus generating spill-over effects that are difficult to identify and measure.

Evaluation is therefore an area where improvements require integrated efforts of IOs with their membership. While IOs may have the expertise and the methodology to carry out evaluation, domestic actors have the knowledge about impacts of IO rule making and its coherence with national regulatory frameworks. In addition, the disciplines of good regulation, and in particular evaluation practices in rule-making, have been developing fast at the national level (OECD, 2015). Lessons could be learnt from this experience to feed in the on-going rethinking of evaluation practices of IOs. It may be argued that evaluation is critical for instruments that are directly binding on member states or aim at transposition into national legislation. It is also likely to be important to ensure increased implementation and impacts of less binding instruments.

Figure 5.4. **Evaluation mechanisms by nature of IOs**

50 respondents
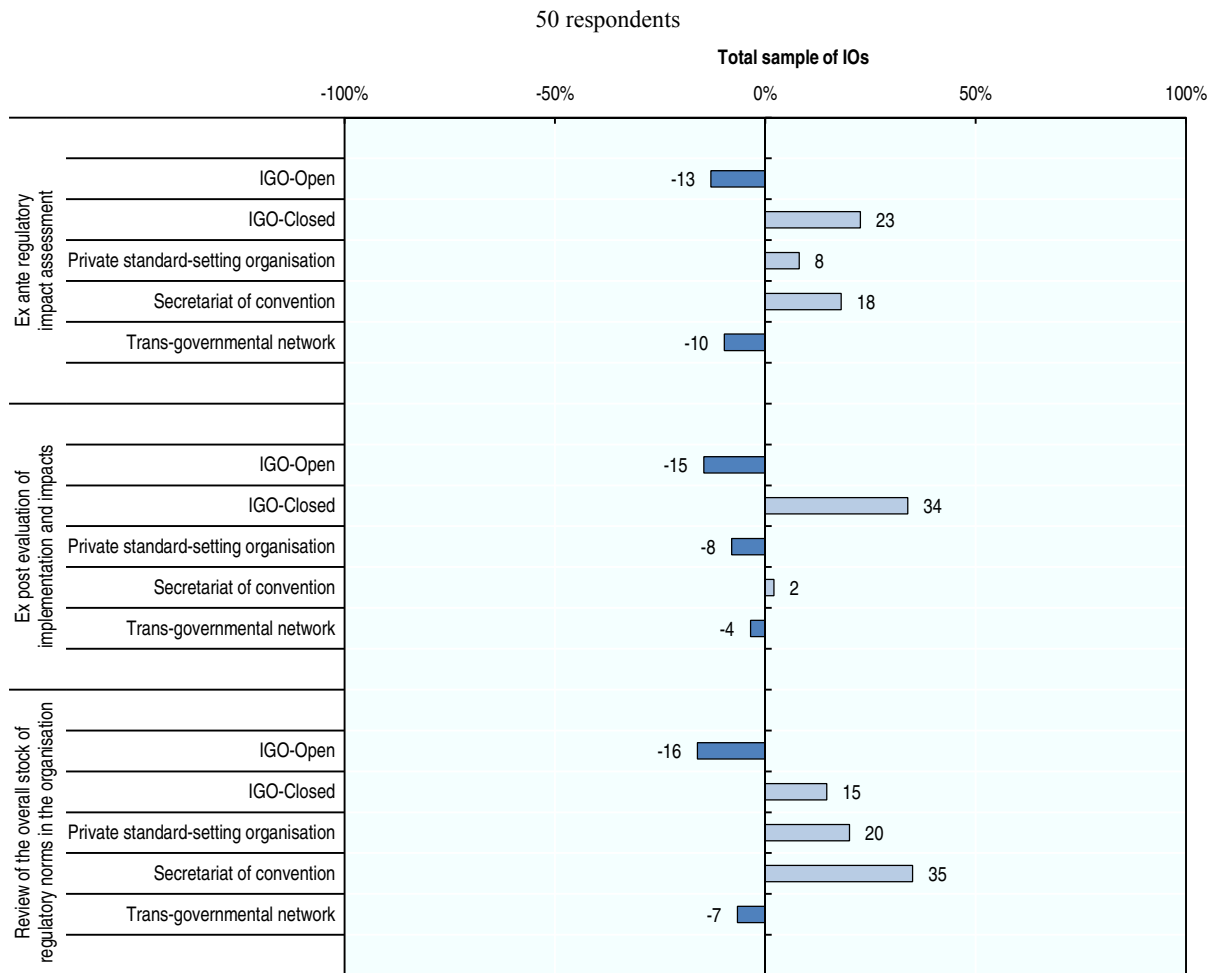
Note: The figure considers both the IOs that answered "systematically" and "frequently" and compares the averages for the specific IO groups to the average for the total sample of IOs. In this figure, the EC is included in the category of closed-membership IGOs.

Source: OECD Survey of International Organisations, 2015.

The IMO presents an interesting case of an IO engaged in a process to reduce administrative burdens. This follows a resolution by the Assembly in November 2011 to adopt a process of periodic review of administrative requirements in mandatory
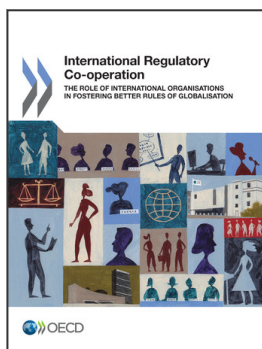
instruments. Within that context an Ad Hoc Steering Group for Reducing Administrative Requirements (SG-RAR) was established to develop recommendations for alleviating administrative burdens created by IMO regulations. As part of the work of the SG-RAR an Inventory of Administrative Requirements in mandatory IMO instruments identified 560 administrative requirements, addressing a variety of stakeholders, including governments, IMO, manufacturers and equipment suppliers, maritime administrations, masters and ship's crew, port authorities, recognised organisations, shipbuilders and repairers and shippers. A public consultation process was launched in 2013, generating 3 329 responses, which formed the basis of recommendations to alleviate administrative burdens in 2014 (IMO, 2015).[4]

Notes

1. See for instance Tallberg, J. et al. (2013) and current work at the Graduate Institute of International and Development Studies on Rethinking Stakeholder Participation in Global Governance led by Ayelet Berman and Joost Pawelyn.

2. BIAC (http://biac.org), TUAC (www.tuac.org) and OECDWatch (http://oecdwatch.org).

3. The discussions held among IOs as part of the second meeting of international organisations on International Regulatory Co-operation: Fostering the contribution of international organisations to better rules of globalisation held on 17 April 2015 at the OECD highlighted the importance of monitoring the implementation of their instruments and other IRC activities and of evaluating the impacts produced. This reflects a shared heightened ambition for the future of IRC, described so far being largely limited to upstream interventions in the form of soft co-ordination. (…) The discussions showed that IOs were generally under increasing pressure from their constituency to carry out more evaluation.

4. www.imo.org/OurWork/rab/Pages/default.aspx.

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