

Chapter 3

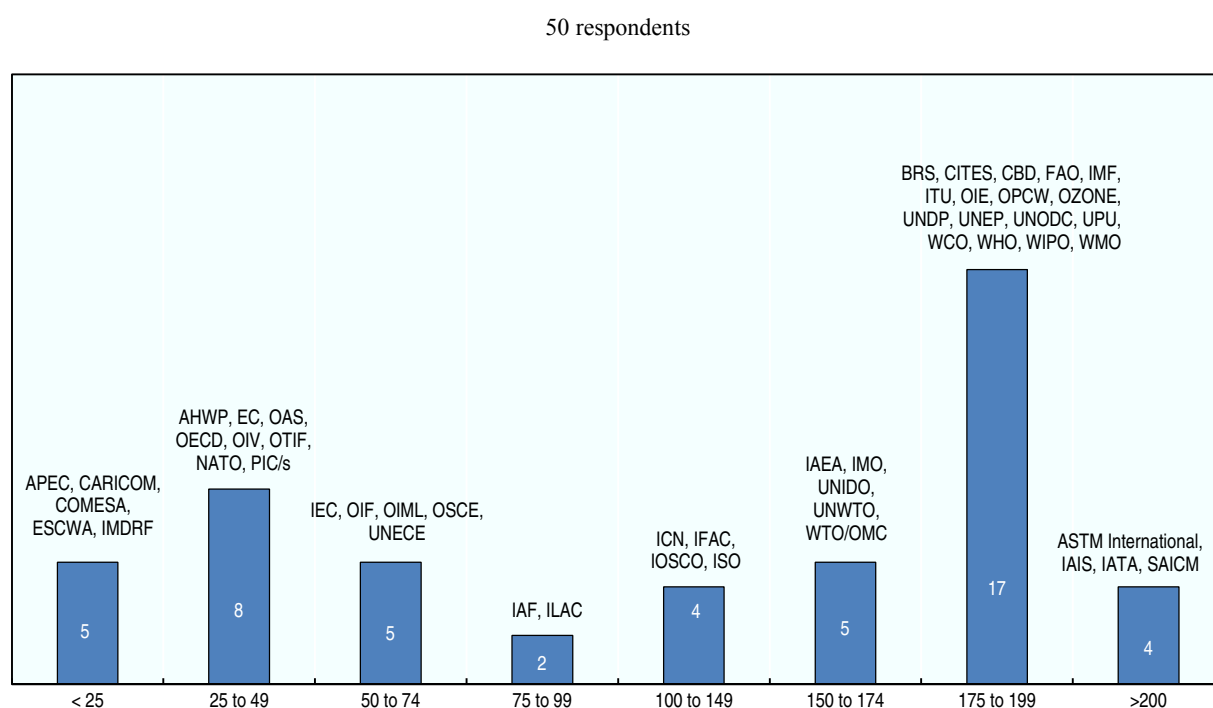
The governance and operational modalities of international organisations

International organisations are organised in different ways to deliver on their normative activities and, more generally, on their contribution to regulatory co-operation. There are differences in their governance arrangements and in their operational modalities. Past decades have seen the emergence of new forms of international platforms - such as the trans-governmental networks of regulators. This chapter analyses the variety in the governance and operational modalities of international organisations based on the answers to the 2015 OECD Survey of International Organisations. It provides an overview of membership, governance structure, decision making processes, legal and policy instruments and budget and staff of international organisations.

According to the *OECD Best Practice Principles for the Governance of Regulators*, to support its activities and ensure that there is confidence in the regulatory regime, a regulator needs a governance structure that combines its human, financial and organisational resources in an effective way. The survey results show significant diversity in the way international organisations (IOs) are organised and in their governance arrangements. There are differences in constituency, as well as in budget and size of the supporting secretariat. Beyond these differences, however, IOs share strong common features – in particular the pursuit of consensus in decision-making; the extension of traditional membership to new geographic zones and non-governmental actors; and, to some extent, some of the roles given to the secretariat.

Membership

Figure 3.1. Size of core membership of international organisations



Note: This Figure reflects the number of full members in IOs and not a broader notion of membership to maintain comparability across IOs.

Source: OECD Survey of International Organisations, 2015.

Size of membership of IOs is varied, from 8 (IMDRF) to 293 members (SAICM) (Figure 3.2), with sometimes different levels of membership (e.g. ILAC has 151 members: 90 full members, 6 regional co-operation bodies, 16 associates, 13 affiliates and 27 stakeholders).¹ It is interesting to note that in some cases, associates will be considered as members (ILAC) while in others they will be considered as non-members (OECD). With some 30 000 members, ASTM International provides an exceptional case, where membership does not follow a national delegation principle. Members are individuals representing producers, users, consumers, governments, universities and other stakeholders. Beyond this exceptional case, most IOs are situated at

the ends of the tails: either at the lower end (under 75 members) or at the upper end (over 175 members). This reflects a divide between IOs whose memberships are largely open and IOs with a more restricted membership – in line with their mission/purpose.

The membership of IOs is also varied in terms of the nature of their members (countries, public authorities, private entities such as business groups or non-profit organisations). Members of inter-governmental organisations (IGOs) are “states” and occasionally other IOs. States are also the parties to international conventions, whose secretariats operate as IOs. By contrast, the members of trans-governmental networks of regulators (TGNs) are mainly regulatory agencies or other public authorities. The extent to which they can be regarded as representing their countries/governments varies. TGNs may also involve private entities as members, like the industry sector (e.g. AHWP). Finally, members of international private standard-setting organisations may be public, private or mixed entities (e.g. IEC, ISO), including business groups and non-governmental organisations (NGOs).

Table 3.1. Average number of (full) members by nature of IOs

49 respondents

Nature of IOs	Average number of full members	Nature of members
IGO	122	States
• Open	165	
• Closed	33	
Secretariat of convention	189	States
TGN	115	Mostly public regulators at the national and/or sub-national level (e.g. IAIS, ICN, IMDRF, IOSCO, PIC/S), including accreditation bodies (e.g. IAF, ILAC). But it can also comprise industry (e.g. AHWP), IOs (e.g. IAIS, IOSCO), or all interested stakeholders in the field concerned (e.g. ILAC, SAICM).
Private standard-setting organisation	147*	Public, private or mixed (public and private) entities. Mixed, with one representative per country (public or private): e.g. IEC (national committees dedicated to the electrotechnical sector), ISO (national standard bodies) Mixed, with all interested stakeholders in the field concerned: e.g. ASTM International (individuals representing producers, users, consumers, governments, universities...) Corporations: e.g. IATA (airline companies)

Note: The number excludes ASTM International, whose membership reaches 30 000.

Source: OECD Survey of International Organisations, 2015.

Table 3.1 summarises the information on membership and provides the average number of full members by nature of IOs. Overall, and unsurprisingly, the membership of “open” IOs (i.e. IOs aiming for universal membership) is significantly larger than that of “closed” IOs (i.e. IOs with restricted membership). Further analysis using the classification provided in Annex also shows that the membership of “sectoral” organisations (i.e. IOs with a sector-specific purpose) tends to be twice the size of membership of IOs with broad purpose (146 members on average versus 71). This could be explained by the fact that co-operation on specific matters fosters broader participation, which is in turn instrumental in ensuring the global effectiveness of this co-operation. In Figures 3.1 and 3.2, IOs with up to 74 members are “closed” IOs (AHWP, APEC, CARICOM, COMESA, ESCWA, EC, IMDRF, OAS, OECD, OIV,

NATO, OSCE, PIC/S, UNECE), and most IOs with at least 75 members are “sectoral” organisations dealing only with certain policies.

Membership in TGNs – 115 on average – is limited when compared to open IGOs – 165 on average – perhaps because of a focus on an area of interest or competence limited to a smaller number of members. Private standard-setting organisations have a higher average number of members (147) than TGNs. This can be explained by the generally wide acceptance of the standards they develop, at a global scale, calling for wide representation in their membership, as well as by the varied nature of their members.

Further variation in the membership of IOs is found in the status of members. Indeed, several IOs distinguish between “full” members (also simply called members) – which enjoy the full array of rights and obligations for participants – and other participants in the activities of IOs with a somewhat more limited standing (e.g. no voting right). The nature of these participants is eclectic: non-member states, other IOs, NGOs, academics, or more generally, all interested or qualified parties in the fields covered by the IO concerned. The number and specific powers of these forms of participation will vary very significantly across IOs according to the goal they have been given (e.g. first step to full membership, consultation with all relevant stakeholders on technical matters...). In some IOs, these participants are few and/or have a limited role. In others, they may be very numerous and/or central to the IO’s activity (e.g. OAS, UNECE and UNWTO). This makes it difficult to compare the size and nature of membership among IOs, or to elaborate a pattern according to membership.

Many IOs have partial/associate/affiliate/corresponding members or observers. When they do, their numbers vary from two to over 400. Their specific status depends on each IO, and the only commonality between them is that they have fewer rights than full members. Nevertheless, some general categories can be drawn from the available literature (Daillier, et al. 2009; Klabbers, 2002; Schermers and Blokker, 2003). Partial members are members of certain organs of an IO, but are not members of the IO as a whole. This status was used for example by the UN to involve in the work of some of its organs certain countries that were not yet members of the UN as a whole. For example, in the UNECE a large proportion of the rule-making activities are open to participation on an equal basis by all UN Member States and in all other activities, all UN Member States are allowed to participate as observers. Associate/affiliate members usually have the same rights as members, particularly with the right to attend the meetings of all or most of the bodies, but with reduced contribution obligations, for instance they cannot vote or hold office (e.g. IFAC, UNWTO).

Observers, in principle, do not belong to the organisation. They have more limited rights – they generally have a limited ability to participate in the IOs’ work, lacking the possibility to vote or propose resolutions – and usually only obtain the right to receive some documentation and to participate in activities which directly concern them. They may be permanent (e.g. OAS), as well as more occasional (e.g. OTIF). The number of observers fluctuates. There may be a restricted number of official institutional observers (states or other IOs), in particular in IGOs (e.g. APEC). There may be an unlimited number of observers when any interested party, and notably civil society stakeholders, (e.g. AHWP, ASTM International, OIV), or any qualified/relevant party (e.g. CBD, ICN), can participate. In this case, when there are very numerous and diverse observers (or, more generally, stakeholders without such official status) involved in one way or another in the IOs decision-making process, it becomes complicated to clearly identify the limits set for the membership.

These results illustrate the fact that IO membership has become more complex and varied than 50 years ago. First, new and non IGO forms of IOs (TGNs and private standard setting organisations) have clearly broadened the notion of membership by including non-state actors. Second, IGOs themselves have not been excluded from the broadening of their membership. The IGOs have sought to expand their membership – geographically and/or in their nature – through other forms of participation, such as partial membership (which generally remains a state status); observership or stakeholders’ engagement, which has allowed non-state actors to contribute to rule-making. As the world became more interconnected and economic and political powers evolved, IOs have considered that their continued relevance and, in particular, the quality of their rule-making was a function of their capacity to involve a broader range of actors in their activities. As a consequence, the strictly legal perspective about member or non-member rights needs to be overcome in order to better understand their real functioning.

Governance structure

The survey shows that the governance structure of IOs follows a basic model, with specific variations for each IO. The model is as follows:

The “supreme” organ is plenary and generally meets infrequently to decide on major policy and operational issues. In most cases, this supreme body creates an executive organ (plenary or not), which meets frequently to make common decisions. The reason for this sometimes limited number of members is likely that a plenary executive body would not be capable of effective decision-making, so a smaller body needs to be created for this purpose. The distribution of roles between the supreme and the executive body may vary. For example, the executive organ is sometimes made of two or more bodies, with authority in their respective specialised domains (e.g. OAS, ILAC, OIF, OSCE).

In other cases, the same (supreme) body may serve both as the supreme and the executive organ, sometimes with different levels of representation from members (heads of state or government, ministers, permanent representatives, senior national officials, etc.). This is particularly the case for IOs with a limited number of members (up to about 60 members; e.g. OECD, APEC, OAS, OIF, CARICOM, OSCE, NATO). This is likely because in such instances the membership is small enough to make executive decisions manageable by the sole and supreme organ. The governing body and executive organ is also plenary in a number of technical organisations (e.g. CBD, OIML, UNEP, WCO, WTO/OMC), perhaps because very specific technical matters may not lead to as many and as broad discussions as may exist in more general IOs.

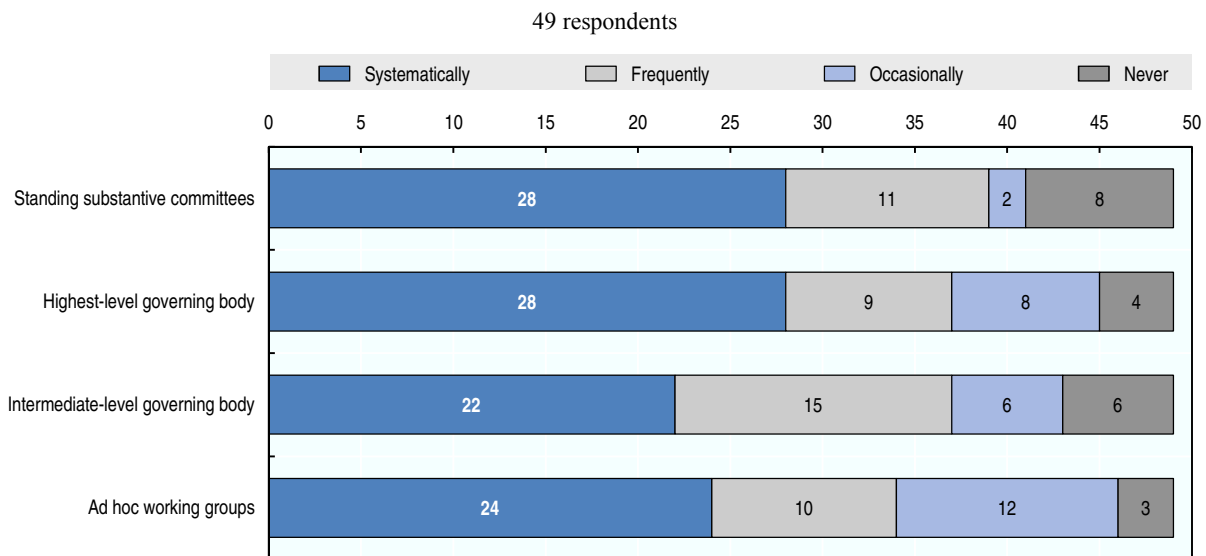
Both the supreme and executive organs may create subsidiary bodies to assist them in specific (administrative or technical) areas. As explained above, some of the IOs from the survey (ESCWA, UNECE, UNODC) are subsidiary bodies of the United Nations. The composition of subsidiary bodies is varied. It may imply a form of parallelism between the subsidiary bodies and the organs which have created them (for example, within UNECE, only UN member states are entitled to participate in its activities). However, the survey results suggest that technical bodies may be plenary when their members are representatives of member states (e.g. FAO), whereas administrative bodies will usually not be plenary. Technical bodies can also be made of independent experts (e.g. OPCW), in which case they are neither plenary nor non-plenary.

IOs generally have a secretariat, tasked with the administrative management of the organisation and, often, with more substantive assistance with the IO's functions, although the size and specific tasks of this secretariat vary widely (see the section below on the role of the secretariat).

Organs involved in IRC and decision-making process

Overall, IRC takes place at all levels of the IOs' structure (Figure 3.2) and typically through a sequence of organs (Figure 3.3), reflecting the gradual build-up of co-operation through the entire decision-making process. Upstream activities of data collection, exchange of information and proposals are generally managed by technical committees and the secretariat of the IO. Instruments of IRC are then approved by one or more of its governing bodies.

Figure 3.2. To what extent does IRC take place within specific organs of your organisation?

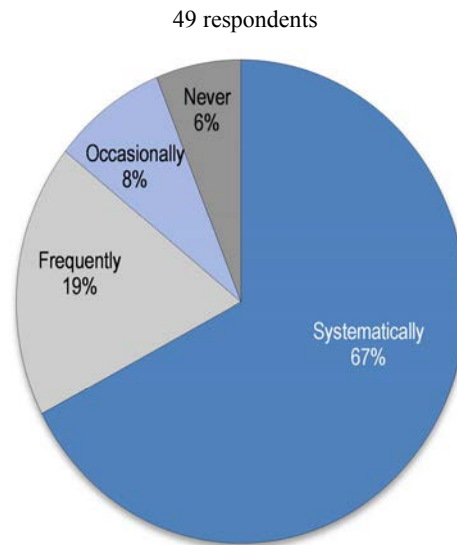


Note: The information is missing for IEC.

Source: OECD Survey of International Organisations, 2015.

Where respondents distinguish between decision-making rules for procedural matters and for substantive matters, procedural issues are decided by simple majority (Table 3.2). On substance, decision-making rules are varied. Qualified majority, when applicable, usually requires two thirds of the votes (e.g. CITES, OZONE, UNIDO). However, consensus has become by far the most applied rules for adopting substantive issues within IOs (Box 3.1 and Table 3.2). Without the need for a formal vote and its advantages over unanimity and majority, it ensures IOs the necessary flexibility to adopt their instruments more easily. Thus, there is a pervasive attempt to always look for consensus (e.g. CARICOM, CITES, FAO, IAEA, IAF, IAIS, ILAC, IMO, OAS, OECD, OIE, OIF, OZONE, PIC/S, UNIDO, UPU, WCO, WHO, WIPO), even despite the existence of decision-making rules providing for other procedures (majority votes, etc.).

Figure 3.3. How frequently do IRC processes involve a sequence of organs (e.g. committee action followed by governing body action)?



Note: The information is missing for IEC.

Source: OECD Survey of International Organisations, 2015.

In practice, in order to obtain a consensus among participants, discussions frequently continue until mutually acceptable decision is reached. When every reasonable effort to come to an agreement has been made, but ultimately failed, it may be decided to proceed to a formal vote as a last resort. For instance, CITES makes most decisions by consensus; voting only occurs when consensus cannot be reached. Similarly, the Basic Texts and Organic Rules of the OIE provide that in making decisions to adopt, amend or delete standards, the OIE Assembly shall make every effort to reach agreement by consensus and voting should only take place if such efforts to reach consensus fail. With a decision-making process based on consensus, there is a risk of endless negotiations. To solve this difficulty, some IOs have decided to postpone the vote on the proposed decision to allow more time for participants to reach an agreement. For example, the OPCW rules of procedure provide for a 24-hours delay.²

Box 3.1. Definition of consensus

Decision-making through consensus allows IOs to adopt a proposal only in the absence of any objection expressed, and without a formal vote. A decision taken by consensus has the same legal force and validity as if there was a vote. Consensus is relatively widespread in IOs. It was an informal decision-making process that emerged from their practice, before being more and more expressly included in many of their constitutive instruments.

- OSCE, Rules of Procedure, “Decisions of the OSCE decision-making bodies shall be adopted by consensus. Consensus shall be understood to mean the absence of any objection expressed by a participating State to the adoption of the decision in question.”
- WTO/OMC, Marrakesh Agreement Establishing the WTO, Article IX:1, Note 1, “The body concerned shall be deemed to have decided by consensus on a matter submitted for its consideration, if no Member, present at the meeting when the decision is taken, formally objects to the proposed decision.”

Box 3.1. Definition of consensus (*cont.*)

- OPCW, Chemical Weapons Convention, article VIII, B, 18), concerning the Conference of the States Parties, “[d]ecisions on matters of substance should be taken as far as possible by consensus”.

Consensus differs from unanimity which normally requires a formal vote of all the participants in favour of the proposal. The agreement obtained by consensus is less general, complete than that obtained by unanimity. Nevertheless, consensus is now being applied in priority by IOs because the adoption of a legal instrument (legally binding or not) through consensus is easier: all must compromise and none has a right of veto. In addition, consensus is preferred to a majority vote that, in the context of decision-making in IOs, tends to crystallise opposition by advantaging the interests of the majority, against those of minorities.

Furthermore, it can be observed that the notion of consensus is evolving by deviating from the traditional legal definition. For some IOs, it is not only the absence of any objection expressed, but now a sustained – significant – lack of opposition, that characterises a consensus.

ISO/IEC Guide 2:2004, “consensus: [g]eneral agreement, characterized by the absence of sustained opposition to substantial issues by any important part of the concerned interests and by a process that involves seeking to take into account the views of all parties concerned and to reconcile any conflicting arguments.

Note: Consensus need not imply unanimity”; ISO/IEC Directives, 2.5.6, the notion of “sustained oppositions” “are views expressed (...) and which are maintained by an important part of the concerned interest and which are incompatible with the committee consensus. The notion of “concerned interest(s)” will vary depending on the dynamics of the committee and must therefore be determined by the committee leadership on a case by case basis.”

Source: OECD Survey of International Organisations, 2015; Aspremont, J. d’, Ventura, D. (2013), “La composition des organes et le processus décisionnel” in Lagrange, E. and J. Sorel (eds), *Droit des organisations internationales*, LGDJ, Paris, p. 422-425; Daillier, P. et al. (2009), *Droit international public*, LGDJ, Paris, p. 694-695; Schermers, H. and N. Blokker (2003), *International Institutional Law*, Martinus Nijhoff Publishers, Boston/Leiden, pp. 523-534, § 771-786.

It is important to note that there may be inconsistencies in the use of “consensus” in survey answers. Several IOs have in fact underlined that the definitions used in the survey for “consensus” and “unanimity” should be interchanged. This may accordingly be reflected in the data, where the prevalence of “consensus” should likely not be understood to mean the agreement of all but rather the absence of objection (e.g. OSCE). Furthermore, it is unclear whether the fact that “consensus/unanimity” is the most frequent decision-making rule reflects the existence of an actual official rule or whether it merely reflects this unofficial push for consensus, while the official rules are in fact some form of (perhaps qualified) majority (e.g. IMO, WHO).

Table 3.2. Decision-making rules applied for procedural and substantive issues

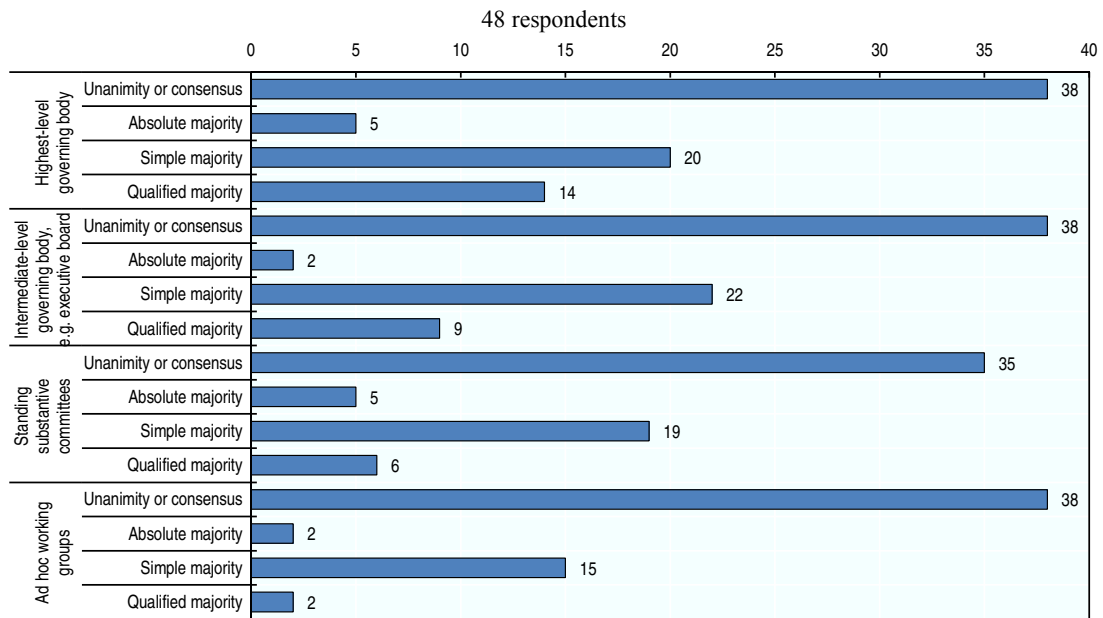
Procedural issues (this information is provided by only 12 respondents)		Substantive issues (this information is provided by 48 respondents)						Inclination to not vote and look for consensus
Consensus/ unanimity	Simple majority	Consensus / Unanimity			Simple majority			
		High-level governing body	Intermediate level governing body	Technical level (Standing substantive committees and ad hoc working groups)	High-level governing body	Intermediate level governing body	Technical level (standing substantive committees and ad hoc working groups)	
8%	100%	79%	77%	81%	38%	44%	42%	54%
OECD (there is only one exception: the vote of the agenda which is by simple majority)	BRS Conv., CARICOM, CBD, CITES, ESCWA, ILAC, OECD, OPCW, OSCE, OZONE, SAICM, WMO	AHWP, APEC, BRS Conv., ASTM Int., CARICOM, CBD, CITES, COMESA, ESCWA, IAF, IAEA, FAO, IAEA, ICN, IEC, IMO, IOSCO, ISO, ITU, NATO, OAS, OECD, OIE, OIF, OIML, OIV, OPCW, OSCE, PIC/S, SAICM, UNECE, UNIDO, UPU, WCO, WHO, WIPO, WTO/OMC	AHWP, APEC, CARICOM, CBD, CITES, COMESA, ESCWA, IAF, IAEA, ICN, IEC, IMO, IOSCO, ISO, ITU, NATO, OIE, OIF, OIML, OIV, OPCW, OZONE, PIC/S, SAICM, UNECE, UNIDO, UPU, WCO, WHO, WIPO, WTO/OMC	AHWP, APEC, BRS Conv., ASTM Int., CARICOM, COMESA, CITES, ESCWA, FAO, IAEA, IAF, IAEA, IATA, ICN, IEC, ILAC, IMDRF, IMO, IOSCO, ISO, ITU, NATO, OAS, OECD, OIE, OIF, OIML, OIV, OPCW, OZONE, PIC/S, SAICM, UNECE, UNIDO, UPU, WCO, WHO, WIPO, WTO/OMC	ESCWA, FAO, IAEA, IAF, IAIS, IATA, IMF, IFAC, IMO, IOSCO, OPCW, OTIF, UNECE, UNWTO, WMO, WHO	ESCWA, FAO, IAEA, IAF, IAIS, IATA, IFAC, ILAC, IMF, IMO, OTIF, PIC/S, UNECE, UNWTO, UPU, WCO, WHO, WIPO	CARICOM, CBD, ESCWA, FAO, IAF, IAIS, IATA, IMO, OAS, OTIF, OZONE, PIC/S, UNECE, UNWTO, UPU, WCO, WHO, WIPO, WTO/OMC	APEC, BRS Conv., CARICOM, CBD, CITES, FAO, IAEA, IAF, IAIS, IATA, IMO, IOSCO, OAS, OECD, OIE, OIF, OIML, OIV, OPCW, UNIDO, UPU, WCO, WHO, WIPO, WTO/OMC

Notes: The information for the EC and UNDP is not included. While the OECD survey did not include a specific question on the decision-making rules of IOs distinguishing between procedural and substantive issues, this table is informed by data collected both from the OECD survey and from the official websites of IOs.

Source: OECD Survey of International Organisations, 2015.

Overall, a significant number of IOs (some 26 out of 48) use both consensus / unanimity and majority decisions (Figure 3.4), while 16 use only the former and 6 only the latter (IFAC, IMF, UNEP, OTIF, UNWTO, WMO). Decision-making rules are usually similar for all organs in a given IO (e.g. IMO, ISO, APEC, OSCE), with, however, the possibility of some form of majority decisions appearing more frequently in higher-level bodies than in technical ones (e.g. IATA, ILAC, OPCW, OZONE). In technical bodies, such as standing substantive committees or ad hoc working groups, consensus is generally dominant. For instance, the OSCE Forum for Security Co-operation (one of the OSCE's two main decision-making bodies) works on the basis of consensus.

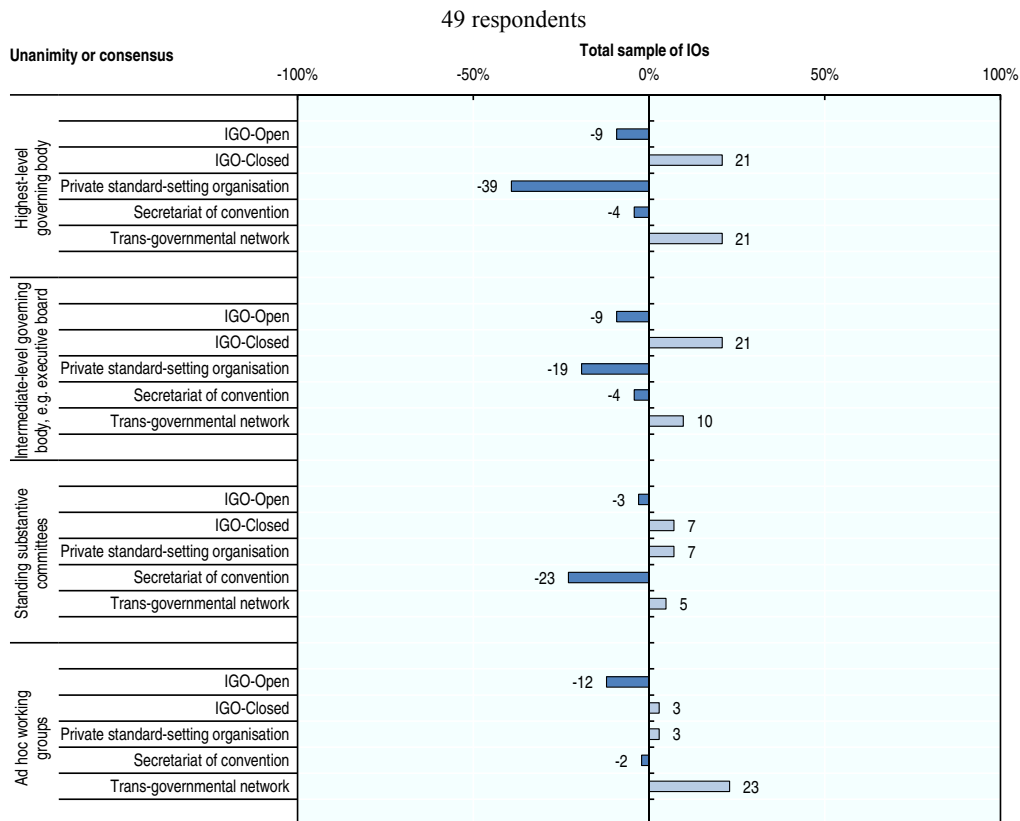
Figure 3.4. What decision-making rules apply to actions by each organ?



Note: The information is missing for the EC and UNDP.

Source: OECD Survey of International Organisations, 2015.

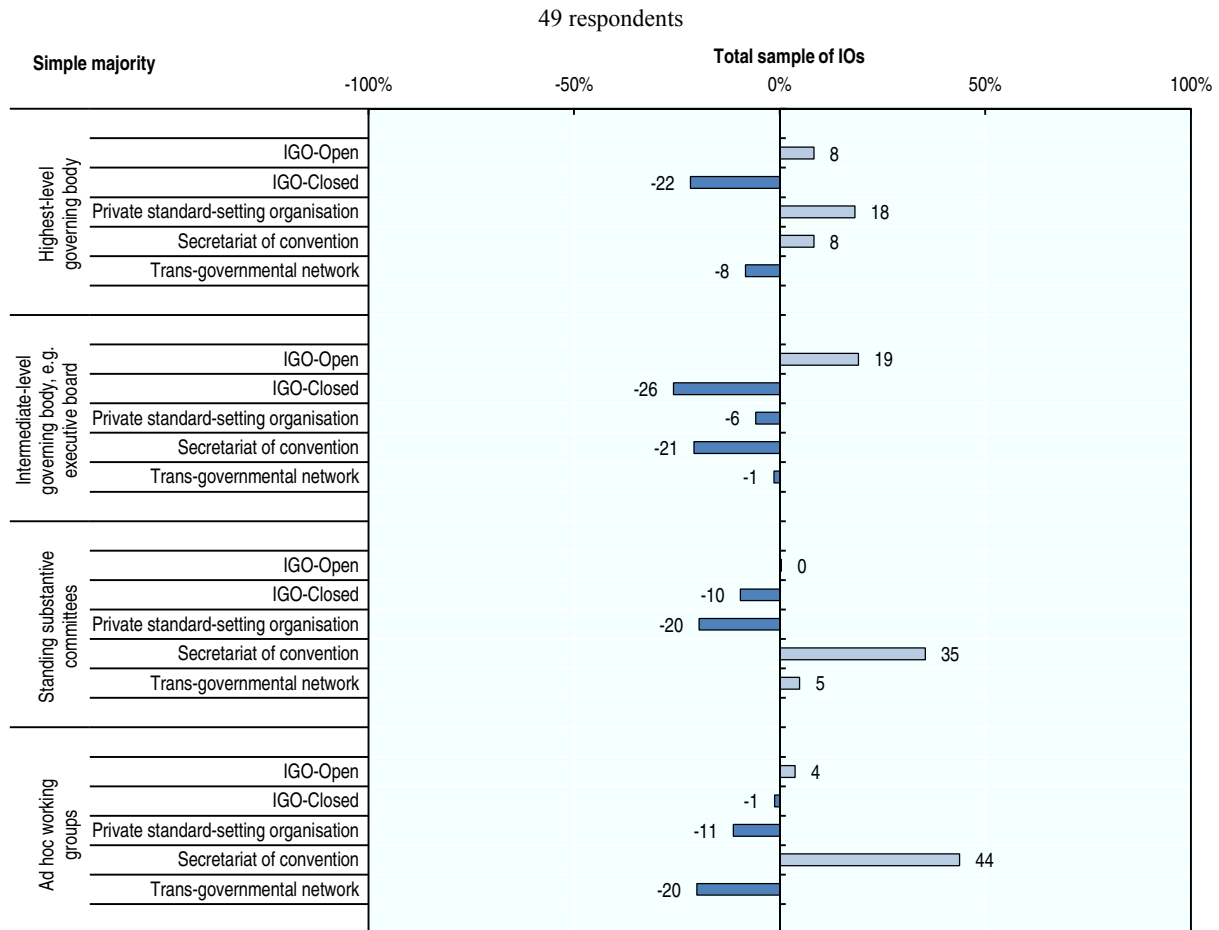
Figure 3.5. Use of unanimity or consensus by nature of IOs



Notes: Excluding the EC and UNDP. The figure compares the averages for the specific IO groups to the average for the total sample of IOs.

Source: OECD Survey of International Organisations, 2015.

Figure 3.6. Use of simple majority by nature of IOs



Notes: Excluding the EC and UNDP. The figure compares the averages for the specific IO groups to the average for the total sample of IOs.

Source: OECD Survey of International Organisations, 2015.

IOs with a large number of members (e.g. IATA, UNEP, UPU, CITES, IMF, WHO, WMO, IAIS) are more likely to have the possibility of majority decisions than IOs with smaller membership, which almost always use mutual agreement (e.g. APEC, ESCWA, NATO, OECD, UNECE). This result is reflected in the difference between closed-membership and open-membership IGOs shown in Figures 3.5 and 3.6. Open-membership IGOs tend to use consensus/unanimity decision-making rules less systematically and simple majority more systematically than the total sample. By contrast, closed-membership IGOs use consensus/unanimity more systematically than the sample. Secretariats of conventions, which enjoy a broad number of members and legally binding instruments, adopt simple majority decision-making rules more systematically. Although they also enjoy a broad membership, international private standard setting organisations use simple majority less systematically than the overall sample. This may reflect the voluntary nature of technical standards, their main products. These trends suggest a real-world approach to decision-making, where mutual agreement is required for technical aspects and in organisations with fewer members, but majority vote is used to push co-operation forward in large organisations or to move beyond some reticence at the political level.

Legal or policy instruments used by IOs in support of IRC

The IOs were asked to identify the frequency with which they adopt the following IRC instruments or to volunteer others that they use. The terms were not defined in the survey, but most are widely used in the charters of IOs. An “Other” category made space for any additional instruments used by the IOs – technical standards are one that was suggested. The following commonly used instruments were investigated:

- Treaties are legally-binding agreements between states (and sometimes IOs) which usually enter into force after ratification by states.
- Legally-binding decisions, also sometimes called “regulations” are adopted by IOs and are legally binding on their members.
- Recommendations are non-legally binding legal instruments adopted by IOs. They differ from non-binding guidance/best practices in the way that they are usually more formal and adopted at a higher level (usually the political/supreme level of the IO).
- Model treaties or laws are “ready-to-use” frames adopted by IOs for their members to use when drafting their own treaties/laws, and are in that sense somewhat similar to recommendations even if more detailed and directly useable.
- Finally, “declarations” are usually high-level aspirational and non-legally binding statements adopted by political (not technical) organs.

Despite the fact that the list was generally intended to distinguish legally binding instruments from the non-legally binding (and to reflect the decreasing level of legal force), there appears to be some variation in the understanding of what some of these categories cover (Box 3.2). This is the reason why there is no general typology based on the definitions given by IOs for each legal instrument. However, it is possible to identify three broad approaches to IO rule-making depending on the legal value of the instruments adopted.

The first approach is through legally binding instruments, i.e. requirements which are meant to be directly binding on member states: conventions and treaties (e.g. FAO, OAS, OZONE, UNEP, UNODC, WTO/OMC); agreements (e.g. CARICOM); protocols (e.g. OZONE); amendments (e.g. CITES, OZONE); decisions (e.g. CBD, OECD, UNEP); or resolutions (e.g. CITES, UNEP).

The second approach is through non-legally binding instruments which by their nature/wording are not intended to be legally binding but States can give them (or some of their provisions) a legally binding value (e.g. through transposition into domestic law or recognition in international legal instruments). For example, it comprises instruments listed as recommendations by IOs (e.g. OECD/CARICOM); sometimes with a different name than “recommendations” (such as standards/OIML/IMF/FAO, principles/IMF/IAIS, best practices guide/IATA, recommended practices/ICN, codes/IMF). This category also includes memoranda of understanding (e.g. ILAC, IAIS, IOSCO); models treaty or law (e.g. CITES, ESCWA, OAS, OECD, OIML, OPCW, UNIDO, UNODC); technical standards (e.g. ASTM International, IAEA, IEC, ISO, WMO); or resolutions (e.g. IATA, OIV).

In this group, technical standards should be highlighted. They are developed in response to a need in a particular area expressed by stakeholders through a bottom up approach. These standards are then voluntarily adopted by states – and may thus become

legally binding –, as well as by private entities, because they are perceived as necessary, justified. They have also received an international recognition through the WTO/OMC TBT and SPS Agreements. The TBT Agreement provides that “[w]here (...) relevant international standards exist (...) Members shall use them, (...) as a basis for their technical regulations” (Article 2:4). WTO/OMC Members may choose to deviate from international standards if they consider them ‘ineffective or inappropriate means for the fulfilment of the legitimate objectives pursued’ (Article 2.4). The SPS Agreement has similar provisions requiring Members to use international standards as a basis for SPS measures (Article 3 in particular), or produce a relevant risk assessment demonstrating the scientific justification for the measure. The TBT Agreement does not provide a list of international standard-setting bodies. However, the TBT Committee has established a set of six principles that help identify whether a standard qualifies as an international standard under the TBT Agreement: transparency, openness, impartiality and consensus, effectiveness and relevance, coherence, and the development dimension (WTO, 2000). The SPS Agreement explicitly cites the standards of the Codex Alimentarius, the OIE, and the Secretariat of the International Plant Protection Convention.

The third approach is through non-legally binding instruments which provide statement of intent with an important symbolic significance or guidance. They primarily express a political will/commitment, such as (political) declarations (e.g. CBD, OAS, OECD, OIF, OSCE, UNECE, UNIDO); recommendations (e.g. OECD); policy instruments/policies (e.g. ISO, UNEP, UNIDO); best practices (e.g. FAO, OAS, OECD, OSCE, UNDP, UNEP), and instruments designated as best practices by IOs (e.g. guidelines/CBD/FAO, resolutions/OIV/WMO).

Box 3.2. Example of variations in the categories of legal instruments adopted by IOs

There is no common definition for each legal instrument adopted by IOs. When IOs try to define the legal instruments they adopt in their constitutive charter (which is relatively rare), the given definition is intended solely for the purpose of each respective IO. Only the terms “treaty” and “convention”, which are almost synonymous, seem to receive the same meaning (e.g. ILO), notably thanks to the definition of key terms used in the UN Treaty Collection.

UN Definition of key terms used in the UN Treaty Collection defines “Convention as a generic term: Art.38 (1) (a) of the Statute of the International Court of Justice refers to ‘international conventions, whether general or particular’ as a source of law, apart from international customary rules and general principles of international law and – as a secondary source – judicial decisions and the teachings of the most highly qualified publicists. This generic use of the term ‘convention’ embraces all international agreements, in the same way as does the generic term ‘treaty’”; “In order to speak of a ‘treaty’ in the generic sense, an instrument has to meet various criteria. First of all, it has to be a binding instrument, which means that the contracting parties intended to create legal rights and duties. Secondly, the instrument must be concluded by states or international organizations with treaty-making power. Thirdly, it has to be governed by international law. Finally the engagement has to be in writing.”

In general, there is no single and widely accepted definition for each instrument adopted by IOs (which can create confusion for the members and for the external eye). Sometimes a single instrument can have two definitions, if not fundamentally opposed, at least sufficiently different to create confusions. This is the reason why there is no general typology based on the definitions given by IOs for each legal instrument. However, a classification may be envisaged depending on the legal value of the instruments adopted. This typology could focus on their legally binding character.

Box 3.2. Example of variations in the categories of legal instruments adopted by IOs (*cont.*)

For example, among legally binding instruments, it should be noted that the term “decision” is not entirely satisfactory: because of its generality, it is not possible to determine what it could exactly mean. For example, within the OECD, Decisions are legally binding on all those member countries which do not abstain at the time they are adopted. While they are not international treaties, they do entail the same kind of legal obligations as those subscribed to under international treaties. Adherents are obliged to implement Decisions and they must take the measures necessary for such implementation (see also ITU, UNEP).

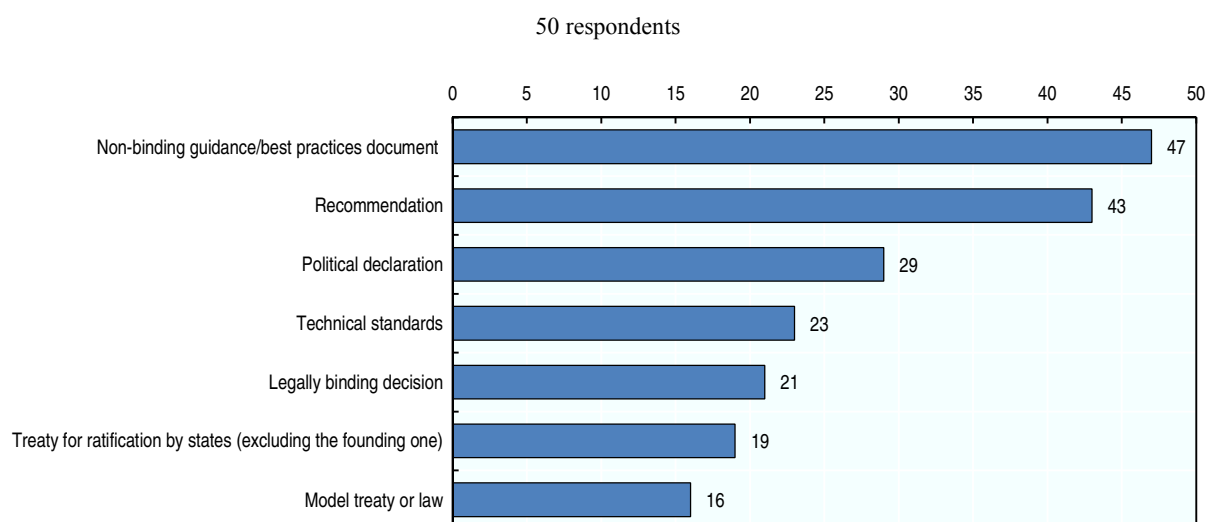
Among non-legally binding instruments, while the term “recommendation” was intended to target non-legally binding legal instruments formally adopted at a high level and addressed to states, some IOs have a broader view of what a recommendation is, for instance as any non-binding guidance, often adopted at a technical level (e.g. APEC, CBD, CITES, COMESA, ESCWA, IATA, IMDRF, IMF, NATO, OZONE, PIC/S, UNODC). These “recommendations” may also in fact be very close to what other organisations call model laws/regulations (e.g. OIML).

Some instruments may also be legally binding, as well as non-legally binding. According to the definition of key terms used in the UN Treaty Collection, declarations “that are intended to have binding effects could be classified as follows: a) A declaration can be a treaty in the proper sense. (...) b) An interpretative declaration is an instrument that is annexed to a treaty with the goal of interpreting or explaining the provisions of the latter. c) A declaration can also be an informal agreement with respect to a matter of minor importance. d) A series of unilateral declarations can constitute binding agreements”. But, not all declarations are legally binding and the “term is often deliberately chosen to indicate that the parties do not intend to create binding obligations but merely want to declare certain aspirations”. Similarly, memoranda of understanding refer to “international instruments binding at international law (...) of a less formal kind. It often sets out operational arrangements under a framework international agreement” (UN, Definition of key terms used in the UN Treaty Collection). However, some IOs expressly consider that they are not legally binding (e.g. IAIS, ILAC, IOSCO).

This shows a certain lack of clarity in distinguishing between different non-legally binding instruments, particularly between policy instruments and technical guidance papers.

According to the survey results (Figure 3.7 and Table 3.3), there is widespread use of all types of instruments. However, non-legally binding instruments and policy standards are used much more often than legally binding ones. All IOs adopt soft instruments and it was difficult for some IOs to estimate the number of policy standards (e.g. political declaration and guidance/best practices documents) developed (Table 3.3). While there is a substantial number of IOs that, in fact, adopt only non-legally binding instruments, IOs which adopt legally binding instruments usually also develop non-legally binding ones. It is worth noting that 8 IOs reported the adoption of their own founding legislation as part of treaties adopted by their organisations. For the sake of clarity, they were excluded from the statistics in Figure 3.7 and Table 3.3 to illustrate the occurrence of “new” treaties beyond those establishing the IOs. Almost half of the sampled IOs report developing technical standards. When IOs engage in this activity, the number of standards adopted on average is well beyond the number of other instruments.

Figure 3.7. **What types of legal or policy instruments does your organisation adopt to embody understandings on IRC?**



Note: The figure does not consider the treaties or conventions establishing the IOs as a product of the IOs. For this reason, the number of IOs that adopt treaties for ratification by states does not include BRS Conventions, CITES, COMESA, OIE, OIML, OIV, OPCW and UNIDO, although they are tasked with managing their own funding treaty/convention.

Source: OECD Survey of International Organisations, 2015.

Table 3.3. **Estimated numbers of legal and policy instruments of IOs**

50 respondents

	IOs adopting this instrument	IOs able to provide number of instruments	Total number of instruments provided	Average number of instruments/IOs	Variance
Treaty for ratification by states	19	19	376	20	From 1 (OSCE) to 100 (UNECE)
Legally binding decision	21	14	8 970	641	From 1 (ILAC) to >6 900 (EU)
Recommendation	43	28	6 500	232	From 3 (WIPO) to >2 000 (UNIDO)
Political declaration	29	14	279	20	From 1 (SAICM) to 30 (WCO)
Model treaty or law	16	5	75	15	Mostly 1 and 2 70 (CARICOM)
Non-binding guidance/best practices document	47	22	3 559	162	From 1 (SAICM) to 1 500 (ASTM International)
Technical standards	23	18	48 573	2 699	From 1 (PIC/S) to 21 000 (ISO)

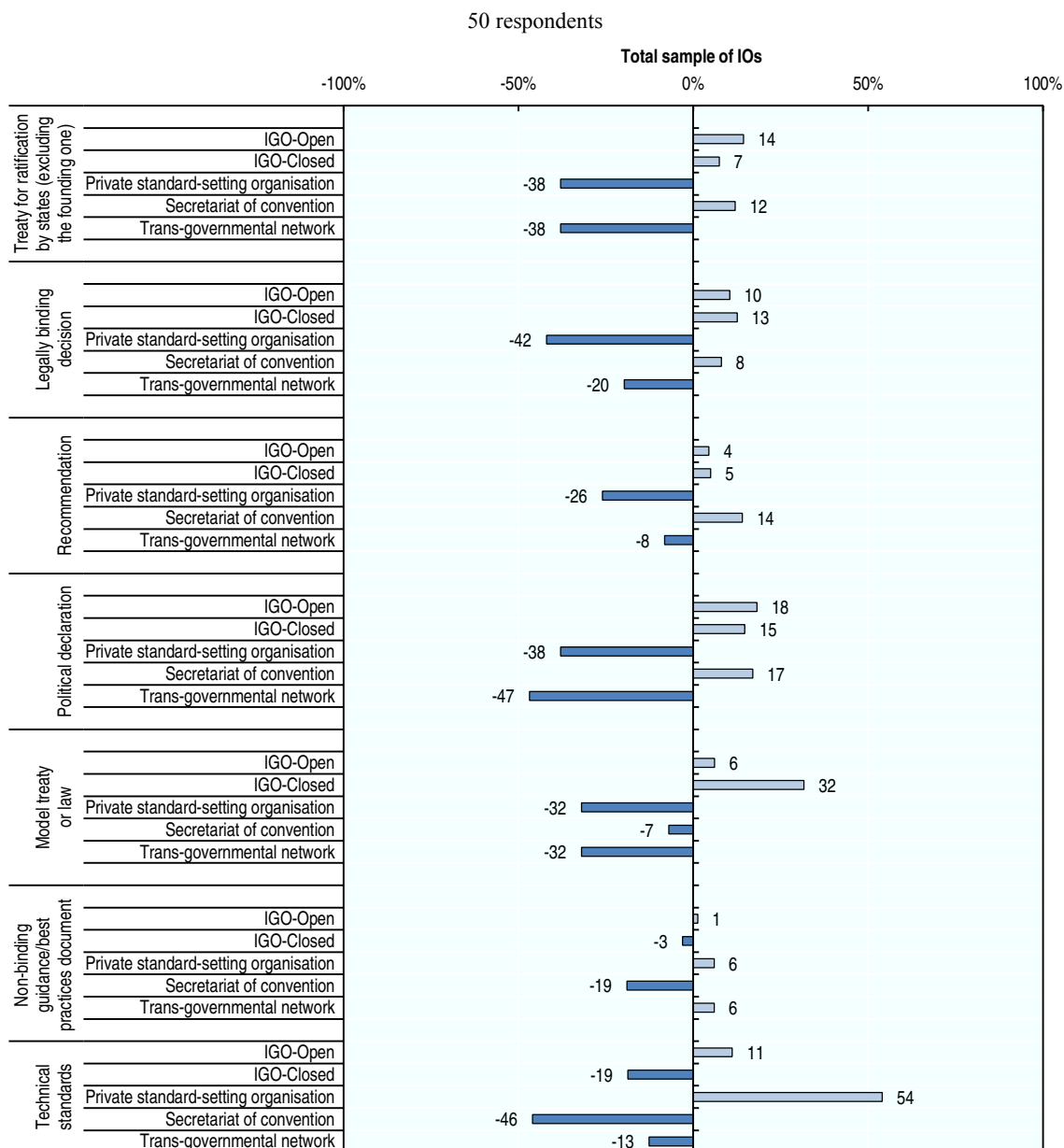
Notes: Reported numbers are estimates based on information provided by IOs.

The first row of the table (Treaty for ratification by states) excludes the IOs that reported their founding treaty only (BRS, CITES, COMESA, OIE, OIML, OIV, OPCW and UNIDO).

The information on technical standards is derived from the IO profiles in Annex.

Source: OECD Survey of International Organisations, 2015.

Figure 3.8. Types of instruments by nature of IOs



Notes: The figure 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.

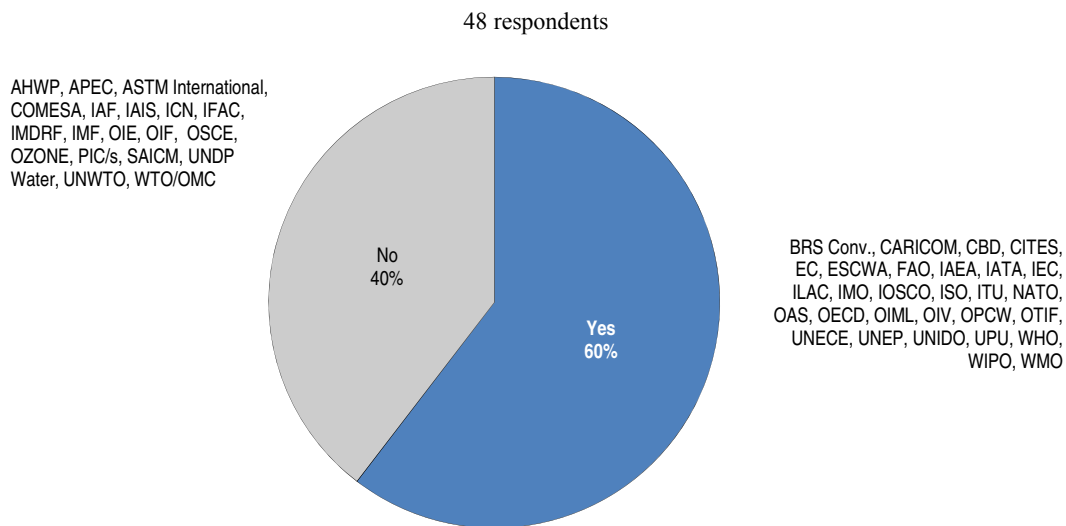
Source: OECD Survey of International Organisations, 2015.

An analysis by nature of IOs shows that, in general, legal and policy instruments (treaties / legally binding decisions / recommendations / political declarations / model treaties or laws) are mainly adopted by IGOs and secretariats of conventions (Figure 3.8). Trans-governmental networks and private standard-setting organisations tend to adopt only non-binding documents. Unsurprisingly, standard-setting organisations strongly focus their activity on the production of technical standards. However, the evidence shows that other IOs, in particular open-membership IGOs also produce technical

standards. Generally, an important finding of the survey results is that IGOs and secretariats of convention adopt a much wider variety of instruments (on average, they have selected 4.8 and 4.3 of the 7 categories offered in the survey, respectively) than TGNs (2.4 categories on average) and international standard-setting organisations (2.8 categories). The relative homogeneity of products of these last two categories is an important feature that differentiates them from IGOs.

A majority of IOs (29) provide flexibility to their members to decide whether or not specific instruments or parts thereof apply to them, for example, through opt-in and opt-out mechanisms (Figures 3.9 and 3.10). However, 19 IOs do not make use of these mechanisms. This feature is not simply explained by the decision-making rules of these organisations which are of much the same kind as IOs that do provide such flexibility. It is more likely related to the formality of the IO and the stringency of its instruments. With a couple of exceptions, it is mainly IGOs and secretariats of convention that provide for these mechanisms. Almost three quarters of these IOs make use of these procedures, while it is only a quarter of TGNs that have this flexibility.

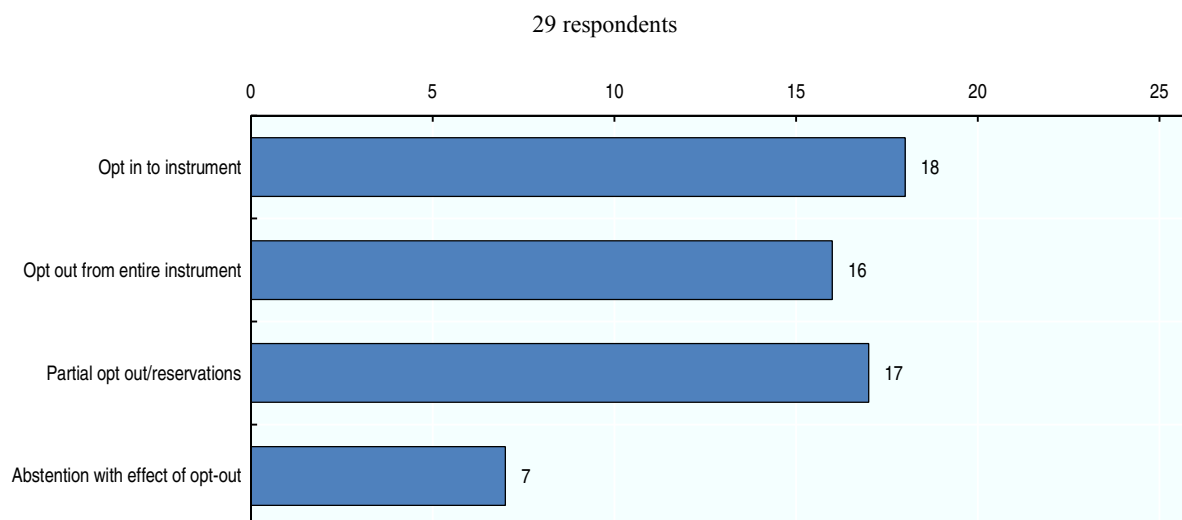
Figure 3.9. **Does your organisation make use of procedures, which allow members to determine whether or not specific instruments or parts thereof apply to them?**



Notes: The information is missing for UNODC and WCO. WTO/OMC does not allow Members to opt out of its instruments. However, there are voluntary plurilateral agreements in force under the WTO/OMC framework in which participation of members is voluntary.

Source: OECD Survey of International Organisations, 2015.

Figure 3.10. Among IOs that make use of these procedures, which are the instruments used?



Source: OECD Survey of International Organisations, 2015.

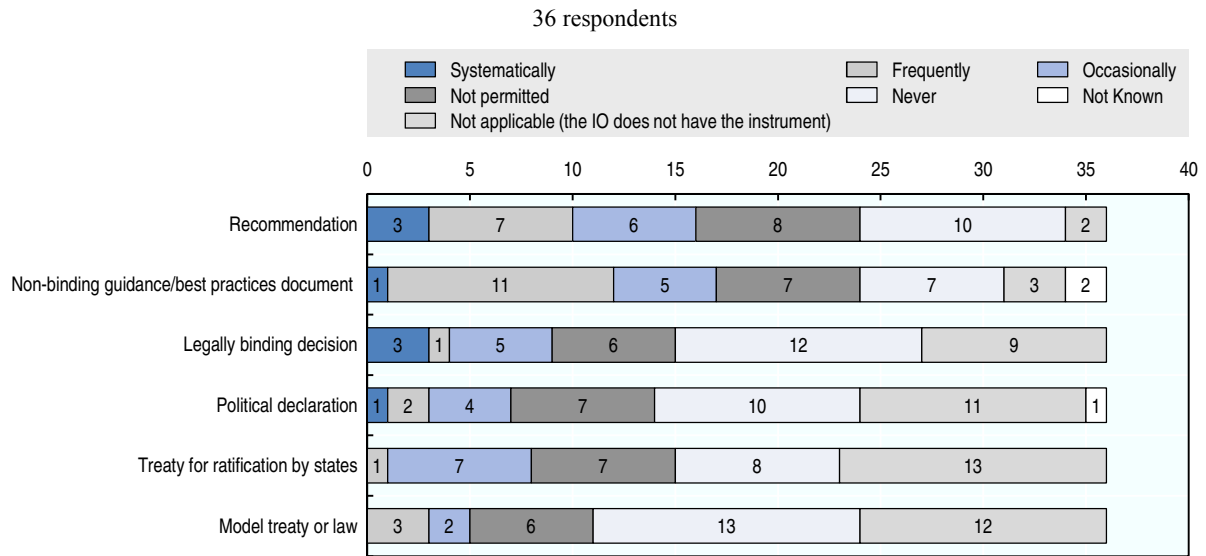
The endorsement of IRC instruments by non-members

A majority of IOs have established procedures to allow non-members to commit (through adherence or endorsement) to their instruments (Figure 3.11). Nevertheless, 14 IOs have not responded to this question. This shows a widespread effort from IOs to reach out globally beyond their membership, which could be explained by the importance for the relevance and effectiveness of IRC instruments of having the broadest possible adherence. Overall, IOs which allow non-members to adhere to their instruments can be grouped in two profiles: IOs with a smaller membership (APEC, CARICOM, COMESA, ESCWA, IAF, OECD, OIF, OIML, PIC/S, UNECE) and sectoral IOs which have not yet achieved universal membership (CBD, CITES, IAEA, IAIS, IATA, IOSCO, OPCW, OIV, UNIDO, WIPO). The examples of the OECD and the OPCW are particularly illustrative. Conversely, large sectoral IOs which already cover all relevant members have no reason to allow non-members to endorse their IRC instruments (e.g. UPU). This would seem to show an accurate assessment by IOs of their global outreach needs in terms of maximising the impact of their IRC activities.

However, such participation is also sometimes expressly not permitted (depending on the specific instrument, around 20% of respondents do so, with a slightly higher level for political declarations and treaties), either for all the kinds of instruments that the IO may adopt (e.g. NATO, OAS, OTIF, UPU) or for certain kinds of instruments only (e.g. CARICOM, FAO, IAIS, WCO, WHO).

The adoption of express procedures allowing non-members to commit is somewhat in line with the possibility for members of those IOs to opt-out or opt-in. Both likely reflect a more flexible approach to commitments towards their instruments. Indeed, half of the IOs (CARICOM, CBD, CITES, ESCWA, FAO, IAEA, IATA, OECD, OIML, OPCW, UNECE, UNIDO, WHO) that allow flexibility for members to opt-out or opt-in also extend this option to non-members.

Figure 3.11. How frequently do non-members adhere to or endorse IRC instruments?



Notes: The information is missing for BRS Conventions, EC, ILAC, ICN, IEC, IMF, IMO, OIE, UNDP Water and Oceans, UNEP, UNWTO, OSCE, WMO, WTO/OMC.

Source: OECD Survey of International Organisations, 2015.

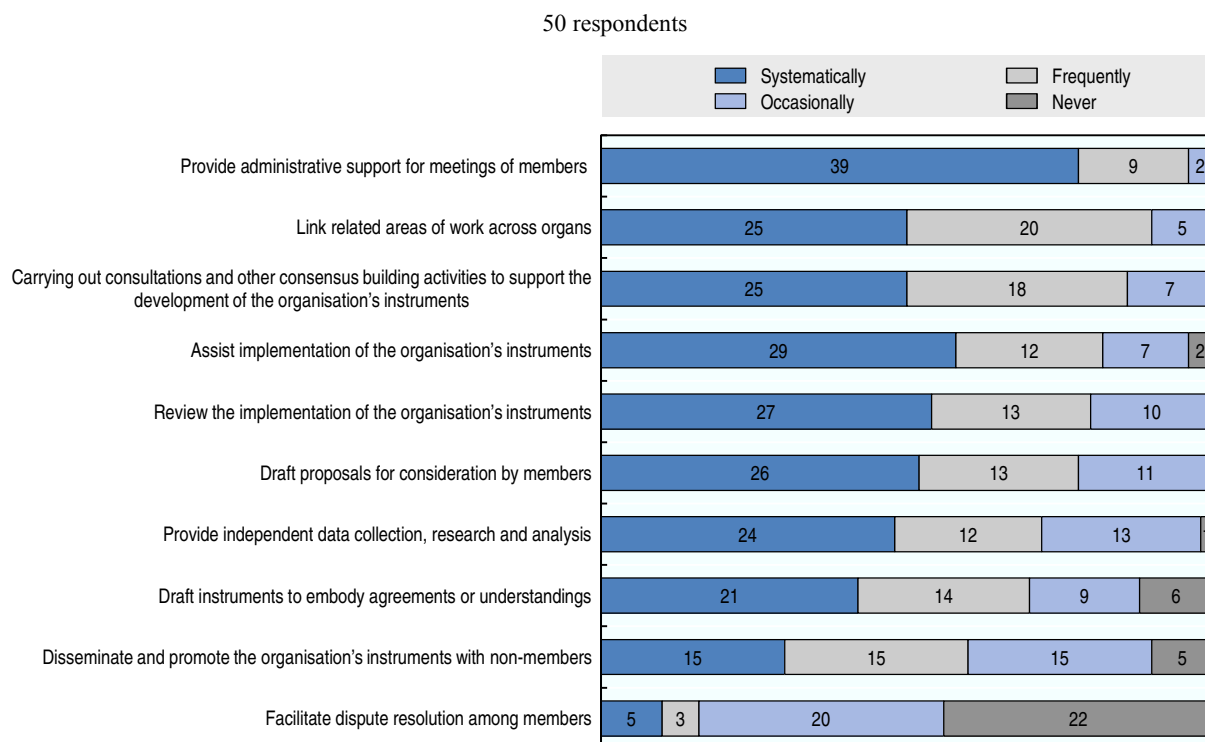
Commitment by non-members is most frequent for non-legally binding instruments such as recommendations, guidance and best practices. This is quite intuitive since the consequences for non-members of committing to non-legally binding instruments are of course much lighter than those stemming from adherence to legally-binding instruments. IOs whose instruments are most frequently endorsed by non-members appear to have more of a general economic policy profile (e.g. OECD, OIML, UNECE). This could be explained by the fact that these instruments can apply and be useful to a wide array of non-members, beyond and despite the idiosyncrasies of their membership. Instruments in other policy domains which may be of interest or apply to fewer non-members are accordingly less frequently endorsed by non-members (e.g. IAEA, OIF). However, it seems to be complicated for IOs to follow and measure with accuracy the adherence or endorsement by non-members, except when a special procedure exists to authorise non-members to adopt their instruments, or when the use of the norm requires a financial payment (for example, in the case of private standards).

The role of the secretariat in supporting IOs in their IRC activities

The secretariat generally has a large and varied supportive role (Figure 3.12): from administrative/logistical support to data collection, drafting of proposals for consideration by members, consultations, assistance and review of the implementation of the organisation's instruments, and their promotion and dissemination. For the vast majority of IOs, the most systematic or frequent task of the secretariat is to provide administrative support for meetings (e.g. call meetings, prepare agenda, chair meetings). For two respondents only this task is occasional. The other tasks of linking areas of work across organs, carrying out consultations and other consensus building activities to support the development of the organisation's instruments, assisting and reviewing the implementation of the organisation's instruments, drafting proposals for consideration by members and providing independent data collection, research and analysis are also

common secretariat activities. By contrast, facilitating dispute resolution among members is an unusual secretariat activity (AHWP, ASTM International, IEC, OPCW and OZONE answered “systematically”; OAS, CARICOM and CITES answered “frequently”).

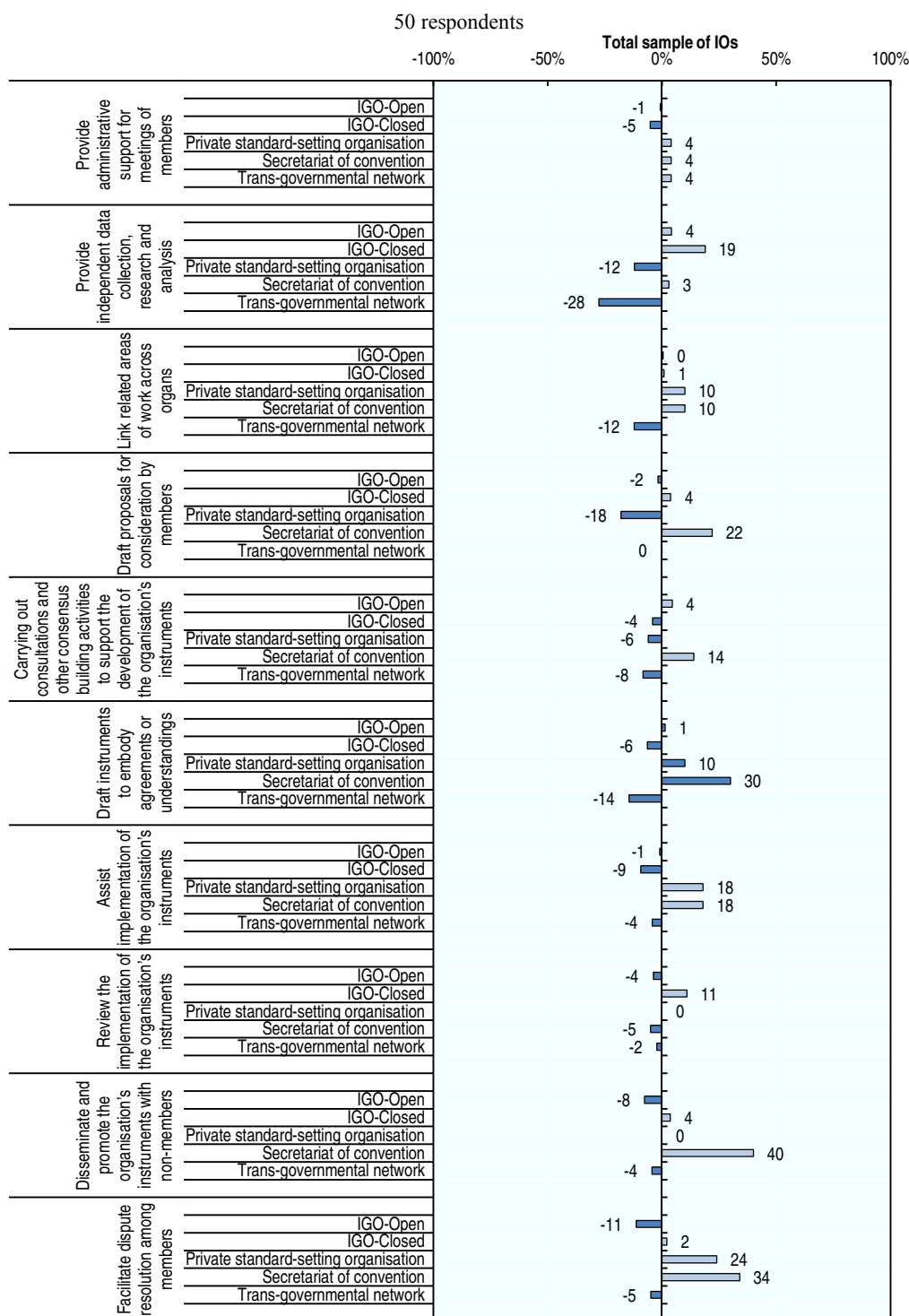
Figure 3.12. Which of the following roles does your organisation’s secretariat play in support of IRC?



Source: OECD Survey of International Organisations, 2015.

There is generally little difference (hence great homogeneity) across IOs in relation to the four major roles of the secretariat (Figure 3.13): providing administrative support for meetings of members, linking related areas of work across organs, carrying out consultations, and assisting in the implementation of instruments. Variations are more prominent in the other areas. Private standard-setting organisations and TGNs tend to be less involved in data collection and research; and drafting proposals or instruments for considerations by members. By contrast, secretariats of conventions are more involved than the overall sample in disseminating and promoting the organisation’s instruments with non-members, facilitating dispute resolution among members, drafting instruments to embody agreements or understandings, and drafting proposals for consideration by members. Generally speaking, secretariats of convention and the European Commission, i.e. IOs with stronger legal powers, seem to enjoy a greater range of secretariat activities (more than seven over the ten proposed in the survey) compared to IGOs, TGNs and international private standard-setting organisations (between four and five activities on average).

Figure 3.13. Roles of the organisation’s secretariat by nature of IOs



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 IOs.

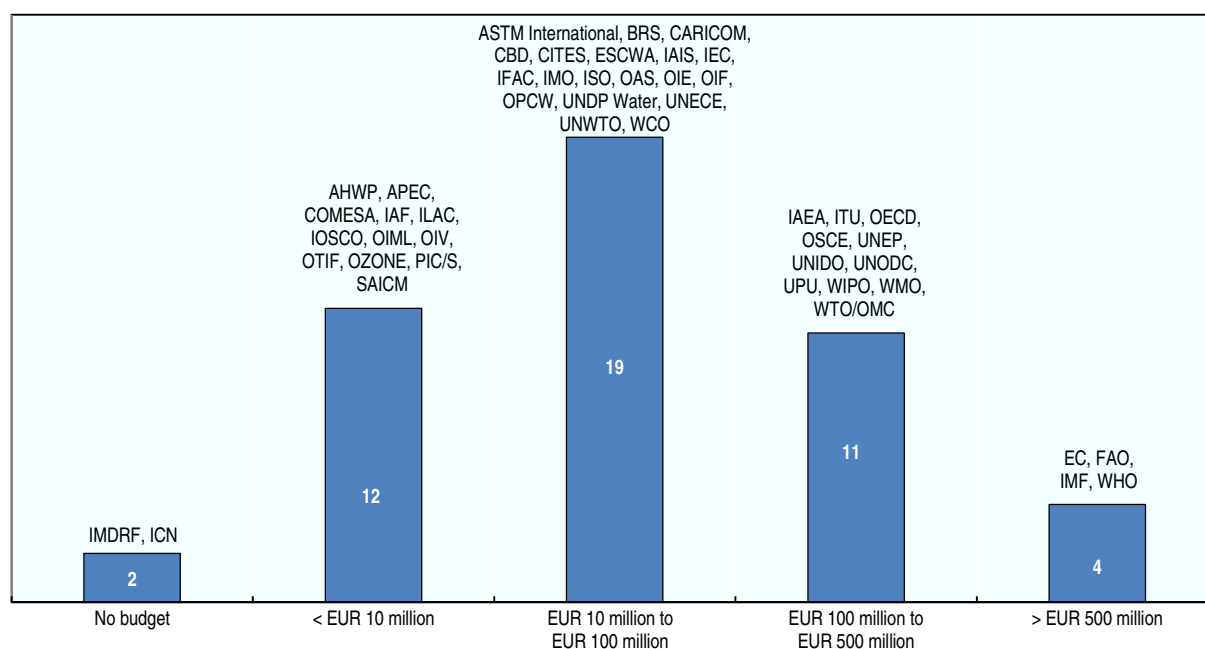
Source: OECD Survey of International Organisations, 2015.

The budget and staff of IOs

The total budget varies widely across IOs (Figure 3.14). This is clearly related to the size of the secretariat (Figure 3.15) and appears to reflect the mandate of the different IOs and/or the extent to which work is mainly undertaken by the secretariat or by member states themselves (e.g. ISO, ILAC, OIML and TGNs more generally). Indeed, when the work of the IO is carried out by staff from the members, even though it is organised by and presented as the result of the IO, it will not show in the IO budget and staffing. As such, the size of the secretariat and of the budget cannot be used as a direct indicator of the scale of the IOs' activities.

Figure 3.14. **What is the annual total budget of your organisation?**

48 respondents

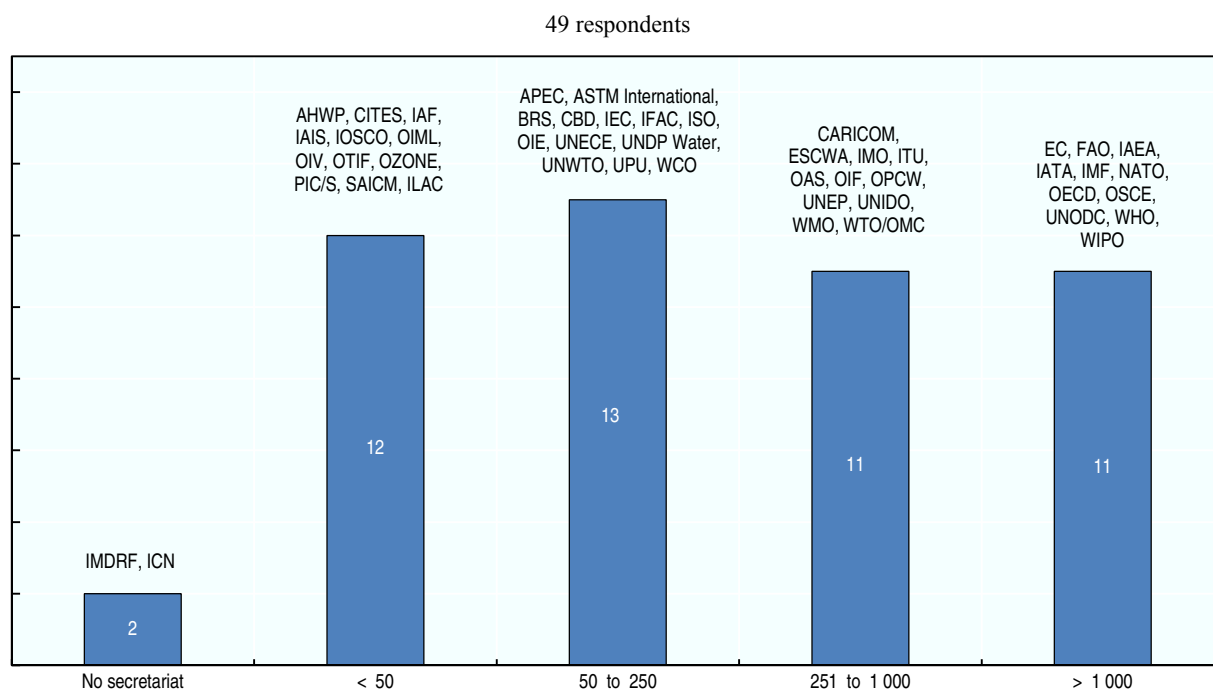


Note: The information is missing for IATA and NATO.

Source: OECD Survey of International Organisations, 2015.

TGNs are all at the lowest end of the distribution in terms of both total budget and staff numbers. Two network organisations (IMDRF and ICN) have no formal structure (no budget or staff) since the members take care of the resource and staff requirements. By contrast, IOs enjoying the greatest budget in the sample (above EUR 100 million) are all IGOs. The four IGOs in the upper tail of the total budget distribution all have a significant secretariat and substantial powers – the EC for instance as a supra-national regulator, the WHO and FAO with large secretariats and the IMF with a broad financial mandate. Despite their significant powers, secretariats of convention are all in the middle range of the budget distribution, in line with a more specific mandate and smaller secretariat. International private standard-setting bodies (with the exception of IATA) are also in the medium range of budget and staff size.

Figure 3.15. Approximately how many staff members does your organisation have?



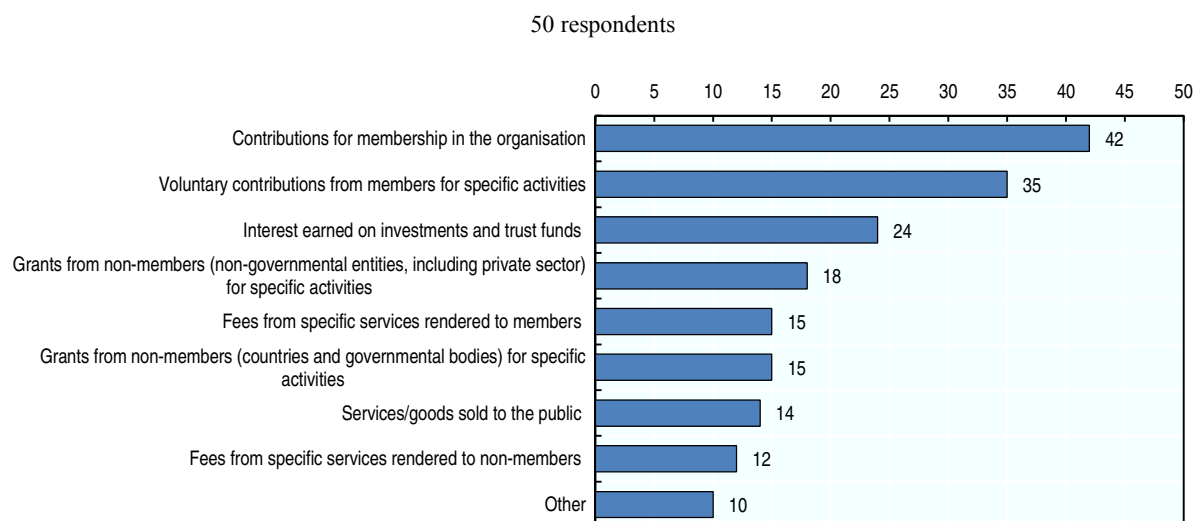
Note: The information is missing for COMESA.

Source: OECD Survey of International Organisations, 2015.

Funding sources are also varied (Figure 3.16). A large majority of respondents report relying for their total budget on contributions from their membership, a consistent feature across all types of IOs although less prominent for TGNs (Table 3.4). This is however shortly followed by voluntary contributions from members for specific activities, a prominent source of revenues for most public-led IOs (IGOs, secretariats of convention and to a lesser extent TGNs). This source is not reported by the sampled international private standard-setting organisations.

Most IOs combine several sources of funding, although the mix of these sources may differ widely even across similar types of IOs. For example, assessed membership contributions only contribute to 5% of WIPO funding, while the remaining 95% come from the registration services it provides and for which it charges a fee. Secretariats of convention rely mostly on a mix of public funding, from their membership (either through assessed and voluntary contributions or grants) or non-members but not from commercial activity).

Figure 3.16. What are your organisation's sources of funding?



Source: OECD Survey of International Organisations, 2015.

Table 3.4. Sources of funding by nature of IOs

50 respondents

Nature (number of IOs in this category)	Membership contribu- tions	Voluntary contribu- tions from members	Interest on invest- ments & trust funds	Grants from non-members (non- governmental)	Fees from specific services (members)	Grants from non-members (governmental)	Services/ goods sold to the public	Fees from specific services (non- members)
IGO-open (21)	19	19	11	10	8	4	7	8
IGO-closed (11)	10	7	3	5	2	5	2	1
Private standard- setting organisation (5)	5	0	3	1	1	2	5	1
Secretariat of convention (4)	3	4	4	2	1	2	0	0
TGNs (9)	5	5	3	0	3	2	0	2

Note: The information corresponds to the number of IOs that report receiving the specific source of funding. The shaded cells show the prominent sources of funding by type of IOs.

Source: OECD Survey of International Organisations, 2015.

Some IOs report relying on interest earned on investments/trust funds and income from the commercial use of their instruments. All international private standard setting organisations rely on a combination of membership contributions and revenues from the sales of their services to the public (plus possibly but less consistently other sources of funding). For instance, ISO collects revenues from the sales of its standards to businesses. Most of ASTM International's income is derived from the sale of standards and other

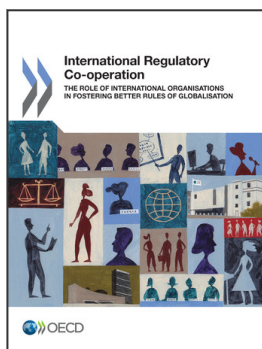
publications; other services, such as proficiency testing, training, and certification and declaration also generate income. Other types of IOs also rely on commercial sources of funding. For example, PIC/S reports receiving royalties from the commercial reproduction of documents. The EC collects revenues from custom duties, certain fees, etc. A number of IOs receive support from a sponsoring or host organisation or from other IOs. This is the case of OPCW, which receives funds from the EC, and of SAICM,³ which is administered by UNEP.

Notes

1. See <http://ilac.org/about-ilac/facts-and-figures/>.
2. See OPCW, Rules of Procedure of the Conference of the States Parties, Rule 69, “If consensus is not attainable when an issue comes up for decision, the presiding officer shall defer any vote for 24 hours and during this period of deferment shall make every effort to facilitate achievement of consensus, and shall report to the Conference before the end of this period. If consensus is not possible at the end of 24 hours, the Conference shall take the decision by a two-thirds majority of the Members present and voting unless specified otherwise in the Convention.”
3. Decision SS.IX/1 of the UNEP Governing Council requested the Executive Director to establish and assume overall administrative responsibility for the SAICM secretariat. As secretariat, UNEP manages as well as contributes to the SAICM funds. Through the same decision, however, SAICM may receive voluntary funding from other sources including governments, regional economic integration organisations, intergovernmental organisations, non-governmental organisations, and private sector.

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From:

International Regulatory Co-operation

The Role of International Organisations in Fostering Better Rules of Globalisation

Access the complete publication at:

<https://doi.org/10.1787/9789264244047-en>

Please cite this chapter as:

OECD (2016), “The governance and operational modalities of international organisations”, in *International Regulatory Co-operation: The Role of International Organisations in Fostering Better Rules of Globalisation*, OECD Publishing, Paris.

DOI: <https://doi.org/10.1787/9789264244047-8-en>

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