1 Why does international regulatory co-operation matter and what is it?

International regulatory co-operation is a key pillar of regulatory policy in an interconnected world. And yet, its full scope and potentials remain often unknown to policymakers and regulators. This chapter aims to familiarise the reader with IRC. It explains why the OECD Regulatory Policy Committee considers it essential to improve the quality of rulemaking and describes the range of mechanisms available to leverage IRC.

Why does international regulatory co-operation matter?

Adapting laws and regulation to an interconnected world

In the past decades, the interconnectedness of countries and the integration of the world economy have increased drastically (Box 1.1), partly due to the many technological revolutions of the past 30 years. The rapid flow of goods, services, people and finance across borders is not least testing the effectiveness and the capacity of domestic regulatory frameworks. If not new, the scale of globalisation combined with the dematerialisation brought by digitalisation increasingly present contemporary policy makers and regulators with challenges that cannot be dealt with in isolation.

The escalation of the COVID-19 crisis into a global pandemic shows how interconnectedness may also have made the world more vulnerable to common threats. It reinforces the need for collective action across policy fronts to supplement domestic action and both tackle the spread of the deadly virus and ensure the flow of essential goods and services (OECD, 2020[1]).

Box 1.1. The evidence of an increasingly interconnected world

We buy goods and services that come from all over the world

Global trade intensity doubled between 1990 and 2015 (measured as the share of the total volume of exports and imports of goods and services in world GDP (OECD, 2017[2]). Today, products cross many borders before they are finally purchased by consumers in a given country (OECD, 2013[3]). Data available for the European Union (EU) shows that cross-border purchases have increased from only 6% of sellers from other EU member states (4% for the rest of the world) in 2008 to 21% (16% for the rest of the world) in 2018 (OECD, 2019[4]).

Yet consumer complaint data shows that growing cross-border transactions online are coupled with an increase in cross-border fraud and sale of unsafe products. In 2018, more than 29 000 international complaints were reported to econsumer.gov, a website dedicated to collecting cross-border complaints (OECD, 2019[4]).

We no longer live in the same place our whole life and travel easily around the world

The total foreign-born population living in OECD countries rose to 129 million people in 2018. On average over all OECD countries, the foreign-born population accounted for 13% of the population in 2018, up from 9.5% in 2000 (OECD, 2019[5]). One in four among 15-year-old students was foreign-born or had at least one foreign-born parent (OECD, 2018[6]).

International passenger travel is increasing globally, and growth is projected to be strongest in developing countries. Global demand for air travel will continue to increase through 2050, with compound annual growth rates of 3.8%. The main drivers are economic growth in developing economies and improving air connectivity. The projected growth rate for global air passenger-kilometer is 4.5% through 2030 and 3.3% through 2050 (ITF, 2019[7])

At the same time that growing travel and trade allow populations worldwide to gain new opportunities and improve their quality of life, increased interdependencies may also have made the world more vulnerable to common threats, as illustrated by the rapid escalation of the COVID-19 pandemic in a global economic and social crisis (OECD, 2020[1]). In 3 months, the virus spread rapidly and led to the brutal stop of economic activity and the lockdown of billions of citizens worldwide.

We use information that comes from many different places

In 2016, about 83% of the adult population in OECD countries had Internet access and 95% of firms registered in OECD countries had high-speed Internet connection (OECD, 2017[2]). Information on Google searches and YouTube viewing revealed an almost universal trend of users increasingly accessing content outside their own country. Data on Paypal's payments show that the Internet is enabling significant cross-border financial transfers on a daily basis (OECD, 2016[8]). The European Commission Impact Assessment accompanying the EU regulation on European Production and Preservation Orders for electronic evidence in criminal matters highlighted that more than half of all investigations involve a cross-border request to access [electronic] evidence (SWD/2018/118 final).

At the same time, information crossing borders thanks to online platforms comes with new risks. Individuals, groups and governments have used online platforms to spread misinformation worldwide, to propagate falsehoods and propaganda for diverse aims, including dividing societies, influencing elections, securing economic gains and recruiting intelligence sources. The growing capabilities of AI and big data analytics allow to propagate, tailor and aim misinformation so that it influences opinions and outcomes faster and more effectively, calling concerted approaches from governments (OECD, 2019[9]).

The rationale for IRC

In such context, IRC may be seen as a necessary strategy to bridge the gap between the domestic nature of rulemaking and the increasingly international dimension of issues that laws and regulations aim to address. As highlighted in (OECD, 1994[10]) and (OECD, 2013[11]), the internationalisation of regulation through co-operation is not new. Practical arrangements for co-operation on laws and regulation have multiplied across jurisdictions and a range of fora – sectoral or regional – established to support dialogues on rules. However, at the exception of a few emblematic systemic examples such the European Union or the Trans-Tasman Mutual Recognition Arrangement, co-operation has mostly followed a path of least resistance with little systematism and overarching strategic vision. In this context, (OECD, 2013[11]) notes that what may be missing is an analytical framework to underpin a clearer understanding of benefits, costs and success factors of the diverse IRC options.

In the face of a lack of data on the benefits and costs of IRC and changing language, the OECD endeavoured to collect evidence and develop the analytical work to support rulemaking. This work has allowed to typify IRC, in particular by broadly defining three main outcomes that IRC may be expected to deliver:

1. **Regulatory effectiveness** – In a context where domestic regulatory frameworks are limited in their reach, IRC may allow addressing challenges beyond a single regulator's jurisdiction, at the (supra-national) level where they may occur.
2. **Economic efficiency** – IRC may limit the undue frictions on international flows that policy makers and regulators may generate when developing and enforcing laws and regulations without considering the international environment.
3. **Administrative efficiency** – IRC may help countries pull intelligence and resources together for issues that may be addressed domestically but may benefit from international intelligence.

The COVID-19 crisis has reinforced this rationale and made particularly apparent the areas in which IRC is needed to achieve successful regulatory outcomes. In line with the general rationale for IRC, the crisis has demonstrated the crucial role of IRC to facilitate the interoperability of services and cross-border activities; to support the resilience of supply chains and enable the availability of essential goods, such as medical and food supplies; and to promote work sharing, mutual learning and pooling of resources between governments to adapt their regulatory policy to face the crisis. These specific needs in the COVID-19

context have highlighted IRC as an important building block of structural regulatory reform, essential to embed resilience in regulatory frameworks and face on-going and future disruptions (including natural disasters, external shocks, disruptive technology, etc.) (OECD, 2020[1]).

It is worth noting that the rationale for IRC may be relevant at various jurisdictional levels. In particular, the relevance of IRC and expected outcomes may equally apply to regulatory co-operation across subnational levels of government in federal states or other national and supra-national jurisdictions where significant regulatory powers may lie at lower levels of governance.

Regulatory effectiveness

IRC allows countries to tackle regulatory challenges at the level where they occur. Climate change, tax evasion and avoidance, financial market instability, pandemics, transboundary pollution or migration flows are all complex and multidimensional issues of intrinsic transnational nature. These are only a few examples of policy challenges where unilateral or unco-ordinated action may lead to outright failures as the ability of countries to effectively deal with them solely through domestic regulation is limited. A failure to address such challenges may be extremely costly for governments, societies and citizens. Conversely, there are striking examples of how joint approaches and rules between countries can lead to tangible impacts in key sectors (Box 1.2).

Box 1.2. International regulatory co-operation in action

- **Eradicating smallpox through collective action led by the WHO.** Smallpox was a deadly disease that killed millions. In the 19th century a vaccine was developed by various countries. It, however, proved ineffective as travellers regularly spread disease. In the late 1950s, a co-ordinated global programme to fight the disease was agreed to within the WHO (OECD/WHO, 2016[12]). In 1980, finally, the WHO announced that smallpox had been eradicated.
- **Preserving the ozone layer thanks to a protocol between 46 countries.** The Montreal Protocol on Substances that Deplete the Ozone Layer (1987), one of the most successful multilateral treaties in the history of the United Nations, led to the reduction of over 97% of all global consumption of controlled ozone depleting substances.
- **Limiting tax evasion thanks to close co-operation between tax authorities.** The OECD Global Forum on Transparency and Exchange of Information for Tax Purposes has changed the paradigm for transparency in tax matters, by introducing automatic exchange of information between tax administrations. This is facilitated through the OECD Model Tax Convention (OECD, 2013[13]), which enables the co-ordination of internationally-agreed taxation standards and has formed the basis for some 3 500 bilateral tax treaties.
- **Avoiding regulatory war through co-ordinated capital account policies**: capital controls put in place by individual countries have pervasive effects on capital flow dynamics in other economies (Pasricha et al., 2018[14]), (Giordani, Ruta and Zhu, 2017[15]), (Gori, Lepers and Mehigan, 2020[16]). These spillovers in turn increase the likelihood of new capital controls in the affected economy (Pasricha et al., 2018[14]), (Gori, Lepers and Mehigan, 2020[16]). Since countries increasingly resort to unilateral capital controls in a context of volatile flows (Blanchard, 2017[17]), policy reactions to a first mover may thus degenerate into “regulatory wars” (Jeanne, 2014[18]), (Pereira Da Silva and Chui, 2017[19]), ultimately delivering suboptimal equilibria for global welfare. In this context, stronger international co-ordination of capital account policies can mitigate such negative externalities, through agreements that specify the appropriate use of capital flow instruments. The OECD Code of Liberalisation of

Capital Movements (OECD, 2020[20]), introduced in 1961 and most recently revised in 2019, is such an example, providing an established and tested process for transparent international dialogue and co-operation on capital flow management policies.

- **Joint co-operation efforts to curb transboundary air pollution**. The 1991 Canada – United States Air Quality is a flexible framework that includes emission reduction goals for specific air pollutants and sets commitments to align regulations in key areas. The instrument has helped reduce acid rain and ground-level ozone and advance joint scientific and technical co-operation on transboundary air pollution in both countries (Kauffmann and Saffirio, 2020[21]).
- **Early detection of animal diseases to protect animal health and welfare and spread to humans.** As illustrated in the Study in Support of a Future OIE Observatory of Standard Implementation (OECD, 2020[22]), the World Organisation for Animal Health seeks to detect and disclose the status of animal diseases in the world, including diseases shared between animals and humans (zoonoses). This is all the more important that 60% of the pathogens that affect humans are of animal origin. Through a web-based notification tool, the World Animal Health Information System (WAHIS), 182 OIE Member Countries make information on animal diseases in their country public in real-time, as well as the measures taken to control such diseases. The expected outcome of such a shared mechanism is the early detection and prevention of animal diseases that may spread rapidly within and across countries and degenerate into international, and potentially global crisis.
- **Improving water quality, fauna, flora and preventing floods around the Rhine river**: The co-operation promotes, *inter alia*, sustainable development of the Rhine ecosystem, the production of drinking water from the Rhine, and flood prevention. Originally set up between Switzerland, the Netherlands, France, Germany and Luxemburg, the Berne Convention of 1963 gave it a legal basis. The co-operation was subsequently revised and extended to Austria, Liechtenstein, Italy and the Belgian region of Wallonia. The co-operation takes place within the International Commission for the Protection of the Rhine. It takes the form of joint data collection/research, common measures, co-ordination of warning and alert systems and joint monitoring and evaluation of measures. Thanks to this tight co-operation among countries sharing the river, water quality has significantly improved, with 96% of the population connected to a wastewater treatment plant. The number of animal and plant species living in the river have increased and flood prevention measures were implemented (OECD, 2013[23]).

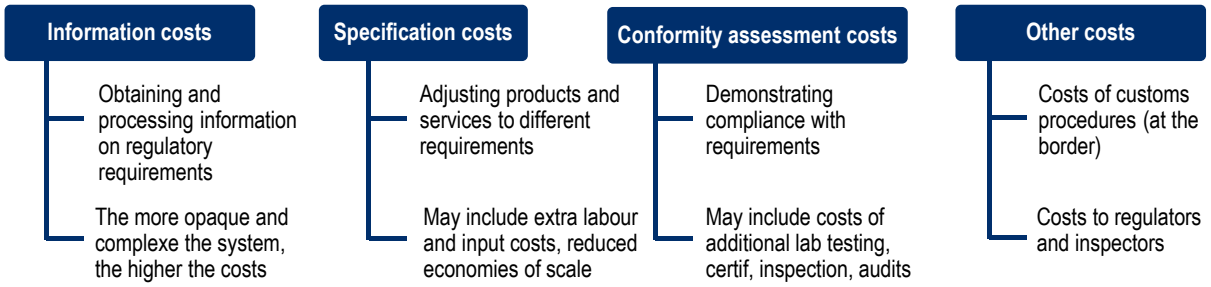
Economic efficiency

Regulating without consideration for the international context is likely to result in unnecessary regulatory fragmentation across countries. While the underlying laws and regulations may not deal with transboundary issues, their divergences across jurisdictions may be costly to businesses, citizens and governments. There are areas where regulatory differences are justified by differing consumer preferences or specific country conditions (geographic or other). There are nevertheless cases where divergences in regulation are purely the results of non-transparent regulatory practices and regulators working in isolation. In these instances, some of the unnecessary costs of regulatory divergences may be addressed to limit frictions on international flows – trade, investment, capital or other.

OECD research shows that for example, costs to traders may be organised in 3 categories (OECD, 2017[24]): 1) the costs to identify the relevant regulatory requirements; 2) the costs to adapt their production processes to comply with them; and 3) the costs to prove conformity to a variety of administrations in various jurisdictions (Figure 1.1).

In the financial sector, regulatory divergences are "perceived" to cost financial institutions between 5 to 10% of their annual global turnover (some USD 780 billion per year), with the financial performance of smaller firms the hardest hit (IFAC/BIAC, 2018[25]).

Figure 1.1. Heterogeneity-related trade costs for producers and traders



Source: (OECD, 2017[24]), "International Regulatory Co-operation and Trade: Understanding the Trade Costs of Regulatory Divergence and the Remedies", OECD Publishing, Paris, https://dx.doi.org/10.1787/9789264275942-en.

Administrative efficiency

IRC improves the capacities of domestic regulators through peer learning, sharing of resources and capacity to benefit from existing evidence/expertise instead through the gathering of international intelligence (Box 1.3). Regulation requires significant expertise and resources to gather the relevant evidence and a functioning regulatory infrastructure for rule development and implementation. It is increasingly difficult for countries and their regulators to afford this expertise. Yet, the complexity of contemporary challenges makes effective and efficient regulatory regimes based on science and solid evidence more crucial than ever. When regulators from different jurisdictions co-operate, they can share their experience, expertise and resources, increase the pool of evidence and practices they can draw from, confront their policy choices and learn lessons from jurisdictions with a track record, thus reducing the overall costs of good regulation. In addition, co-ordination in implementation can further help ensure consistency in application and prevent regulatory arbitrage (OECD, 2010[26]).

Box 1.3. Examples of administrative efficiency gains from IRC

OECD Mutual Acceptance of Data (MAD)

For example, the OECD Mutual Acceptance of Data (MAD) [OECD/LEGAL/0194 and OECD/LEGAL/0252] helps save more than EUR 309 million per year through reduced chemical testing and the harmonisation of chemical safety tools and policies across jurisdictions (OECD, 2019[27]). The co-operation has brought health and environmental gains from Adherents being able to evaluate and manage more chemicals than they would if worked independently, and represents a rare case in which the benefits and costs of international regulatory co-operation have been assessed quantitatively, demonstrating how this co-operation can support administrative efficiency.

Multilateral Convention to Implement Tax Treaty Related Measures to Prevent BEPS (MLI)

The Multilateral Convention to Implement Tax Treaty Related Measures to Prevent BEPS (MLI) that entered into force in July 2018 allowed parties to transpose results from the OECD/G20 Base Erosion and Profit Shifting Project (BEPS) into more than 1 650 tax treaties worldwide. The MLI save governments from multiple bilateral negotiations and renegotiations to implement the tax treaty

changes needed as a result of the measures agreed under BEPS. The MLI currently has 95 signatories or parties from all continents and all levels of development.

European Medicines Agency (EMA)

The European medicines regulatory system is based on a network of around 50 regulatory authorities from the 31 European Economic Area countries, the European Commission and the European Medicines Agency (EMA). EMA works with national bodies in the regulation and licensing of medicines and medical devices and monitoring of their safety. Based on the single EU regulatory system for pharmaceuticals, confidential information is exchanged between the EU member states and results of inspections carried out by any of the EU member states are automatically recognised by all. According to EMA, this regulatory system offers inter alia the following benefits:

- Enables member states to pool resources, expertise and co-ordinate work to regulate medicines. In 2019, for example, EMA recommended the authorisation of 66 new medicines for human use;
- Reduces the administrative burden through the centralised authorisation procedure, helping medicines to reach patients faster;
- Accelerates the exchange of information on important issues, such as the safety of medicines.

Source: (OECD, 2013[13]) and *"Information Brochure: Multilateral Convention to Implement Tax Treaty Related Measures to Prevent BEPS"*, OECD, 2020, available at www.oecd.org/tax/treaties/multilateral-instrument-BEPS-tax-treaty-information-brochure.pdf, (OECD, 2013[11]), (OECD, 2016[28]), www.ema.europa.eu/en/about-us/how-we-work/european-medicines-regulatory-network and www.ema.europa.eu/en/documents/annual-report/2019-annual-report-european-medicines-agency_en.pdf.

Identifying the opportunities for IRC

While it can be argued that a minimum level of "international awareness" is essential to ensure the quality of domestic rulemaking, stronger forms of IRC require more than awareness and do not come free. The efforts and investment they impose to develop and maintain and their costs and potential negative side effects need to be assessed against the expected benefits (as essential that they may be) to make an informed co-operation decision. It is all the more important to identify a range of forms that IRC can take (see section 3), with various benefits and costs.

Broadly speaking, and in line with the rationale for IRC delineated above, OECD research shows that the benefits of IRC can be understood as encompassing four dimensions: 1) the economic gains from reduced costs on economic activity and increased trade, investment and financial flows; 2) the progress in managing risks and externalities across borders; 3) the administrative efficiency from greater transparency and work-sharing across governments and public authorities; as well as 4) the knowledge flow and peer learning accruing from co-operation.

In turn, the potential costs of and obstacles to IRC relate to: 1) the burdens of and resources entailed with developing and maintaining the co-operation; 2) the distance from a jurisdiction's own regulatory "optimum" and the rigidities that the co-operation may generate; 3) the loss of sovereignty (real or perceived) accompanying the consensus building and other challenges raised by the political economy of co-operation; and 4) implementation bottlenecks.

Both the expected benefits and costs/challenges of IRC are explained in further details in (OECD, 2013[11]). They are also declined according to the type of IRC considered – indeed, both the gains in terms of regulatory effectiveness, economic and administrative efficiency and the burdens, challenges and resistance that may be encountered highly depend on the types of IRC approaches considered. Annex A

summarises the findings from (OECD, 2013[11]). In the end, whether the benefits outweigh the costs in specific instances will hinge on various elements, including the sector of interest, the characteristics of the countries involved in the partnership, and the co-operation approach under consideration. To further compound the complexity of assessing the benefits and costs, some of the benefits may not be easily appropriable by countries and while IRC may be beneficial overall, the allocation of gains may vary across jurisdictions.

Regardless of the complexity, OECD research suggests that IRC is a necessary feature of successful policies in areas that share certain features (OECD, 1994[10]), in particular:

1. Areas that are essentially science driven, based on irrefutable facts (e.g. chemical testing) and that benefit from shared methodologies;
2. Areas involving global "goods" or "bads" where problems have an intrinsic cross-border nature and cannot be solved by individual governments, such as global warming, air pollution, banking and finance, pandemics, among other; and
3. Areas for which there is a strong incentive to co-operate, e.g. an unambiguous commercial or economic motivation (typically trade, international investment or financial markets) or where countries can benefit from sharing information (health and safety domains); and where the disincentives to co-operate are limited or can be managed (e.g. the possibility of free riding, i.e. that some countries derive the benefits without incurring the cost of co-operating for example).

There are a number of key drivers of IRC, such as geographical proximity, economic interdependence, and the maturity of regulatory policy in the partners that shape these IRC efforts either enhancing or creating obstacles to their effective delivery (Box 1.4). In addition, the success of IRC is also subject to domestic political economy considerations including the existence of high-level commitment across the political cycle to collaborate with other countries, willingness to deploy resources in advancing regulatory co-operation and building technical capacities these effects, among other.

Box 1.4. Drivers of IRC

A number of factors promote, hinder and shape IRC endeavours. These hypotheses may inform policy makers pondering about when, how and with whom to engage in IRC. They do not represent, however, static rules on the political economy of IRC and may be more or less relevant depending on the sector or policy issue addressed.

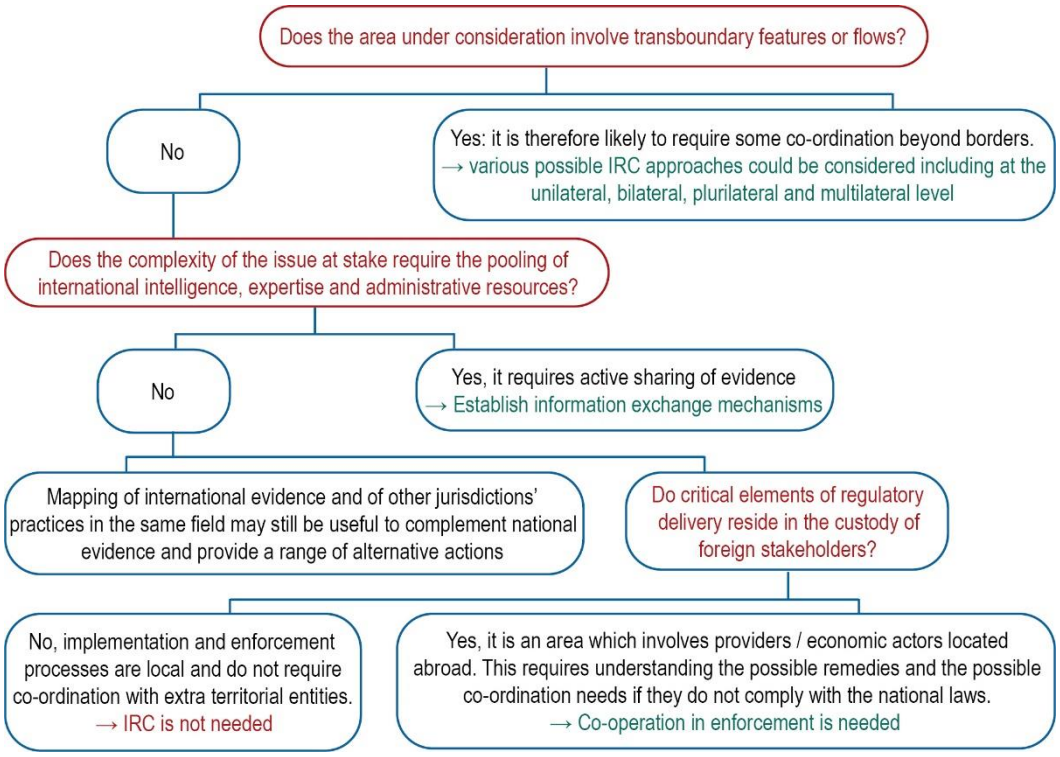
- Geographical proximity: geographical proximity may increase the need and likelihood of co-operation and IRC due to joint challenges, and potentially (but not systematically) similar worldviews and preferences.
- Economic interdependence: high trade volumes and other economic interdependencies are likely to increase the likelihood for co-operation so as to lock in a certain level of regulatory openness and to lower trade costs through the dismantling of unnecessary regulatory divergence.
- Economic properties of partners: the respective economic size of partners may impact their respective capacity to impose their own approach. From this perspective, the evidence shows that IRC is easier between economies of different sizes, where there are obvious "rule-makers" and "rule-takers" rather than between economies of similar sizes and regulatory expectations. In these cases, the availability of international instruments may facilitate IRC by offering a common anchor outside of the two partners.
- Nature of the regulated area: the political sensitivity of measures subject to regulation – i.e. their inherent risk levels or social and economic nature – may significantly affect the

likelihood of IRC. IRC on politically sensitive measures should be more difficult than IRC on less sensitive measures. Depending on the sector, there may also be more or less inter-state competition and free riding dynamics hindering IRC.

- Proximity and maturity of domestic regulatory governance: factors such as the proximity of rulemaking systems and practices and shared legal and cultural heritage are likely to increase the trust of partners in their respective frameworks and therefore provide incentives to regulators to co-operate. The success of IRC also hinges on the maturity of the respective regulatory policy and governance of partners, including the transparency of regulatory governance, the ability of states to enforce regulation and the commitment to IRC at the domestic level. Those are all factors likely to improve the confidence of regulators in the capacity of their peers in foreign jurisdictions to uphold their regulatory standards across borders.

Source: Elaborated from Basedow and Kauffmann (2016), "The Political Economy of International Regulatory Co-operation: A theoretical framework to understand international regulatory co-operation", OECD, Paris, unpublished Working Paper (Kauffmann and Basedow, 2016[29]).

Figure 1.2. IRC decision checklist



Source: Author's own elaboration.

Building on these various characteristics, it is possible to help policy makers navigate the intricacies of IRC and decide on the relevance of IRC in their own field with the support of a synthetic checklist of the key considerations to take into account. While this checklist may need further development and could become a standalone decision tool, a simple decision tree could be structured around the following key questions:

- Does the area under consideration involve trans-boundary features or flows?
- Does the complexity of the issue at stake require the pooling of international intelligence, expertise and administrative resources?

- Do critical elements of regulatory delivery reside in the custody of foreign stakeholders?

The decision to engage in IRC and the type of IRC to be considered would then depend on the answers provided to these questions, a process that is synthesised in the following flow chart above (Figure 1.2).

What is international regulatory co-operation?

Definition and terminology

International Regulatory Co-operation (IRC) is about promoting the interoperability of legal and regulatory frameworks. Based on (OECD, 2013[11]), it can be defined as covering "Any agreement or organisational arrangement, formal or informal, between countries to promote some form of co-operation in the design, monitoring, enforcement, or *ex post* management of regulation". This is in line with the definition adopted in a number of countries (Box 1.5).

There are several implications to this broad definition:

- **First**, **IRC is not restricted to its strict equivalence with international legal obligations, but also includes non-binding agreements and voluntary approaches**. This is exemplified by the wide range of activities in support of consensus building and joint rulemaking provided by international organisations, as well as the variety of international instruments they develop, most of which non-legally binding, and that form the international ecosystem of rules (OECD, 2019[30]). It is also illustrated by the multiplicity of non-binding and voluntary bilateral or plurilateral initiatives that exist across regulators from different jurisdictions supported by Memoranda of Understanding.[1]
- **Second, IRC is not limited to the design phase of the regulatory governance cycle, but importantly includes the downstream side of implementation, enforcement, and *ex post* management of regulation**. There are a number of illustrations of this, including the Canada-US Regulatory Cooperation Council (RCC) (OECD, 2013[31]), which shows that even when policy objectives and rules may be quite align, frictions may arise from diverging enforcement procedures that need to be tackled through on-going discussions. The case of Competition Law Enforcement (OECD, 2013[13]) also demonstrates the importance of exchange of information and co-operation in the remediation of competition cases, an area where international co-operation on enforcement has been increasing since 2012, under the impetus of international fora such as OECD and the International Competition Network (OECD/ICN, 2021[32]). Similarly, co-operation on enforcement proves essential also in the area of consumer safety, typically facilitate enforcement of product safety issues across jurisdictions (OECD, 2013[13]) (OECD, Forthcoming[33]).
- **The focus on "co-operation" in the definition should not hide or minimise the critical importance of unilateral action** to promote interoperability of regulatory frameworks and regulatory coherence internationally and establish solid foundations for collaboration across jurisdictions on regulatory matters. Hence the consideration of unilateral approaches in the OECD typology of IRC instruments, which closely follows the parallel efforts of a number of countries.[2] Unilateral actions may involve directly adopting the regulations or recognising regulatory outcomes or decisions of another jurisdiction or international standards, or applying the regulatory disciplines that will put pressure towards greater regulatory coherence. As such they directly contribute to the objectives of IRC, i.e. to facilitate regulatory interoperability to achieve policy objectives.

Box 1.5. Selected country definitions of international regulatory co-operation

A number of countries provide a definition of international regulatory co-operation and make them available on their websites.

Canada (Treasury Board): Regulatory co-operation is a process where governments work together to:

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

Regulatory co-operation applies to a range of regulatory activities, including: policy development; inspections; certification; adoption and development of standards; and product and testing approvals.

New Zealand (Ministry of Business, Innovation and Employment): International regulatory cooperation is the different ways that regulators from different countries work together to discuss, develop, manage or enforce regulations.

United States (Executive Order 13609 of 1 May 2012): ''International regulatory cooperation'' refers to a bilateral, regional, or multilateral process […] in which national governments engage in various forms of collaboration and communication with respect to regulations, in particular a process that is reasonably anticipated to lead to the development of significant regulations.

In addition to these generic definitions of IRC, a number of trade agreements with dedicated chapters on regulatory policy and co-operation provide working definitions of IRC adopted solely for the purpose of the agreement. These definitions are not directly comparable as they reflect the different scope and focus of each chapter.

Agreement between New Zealand–Singapore on a Closer Economic Partnership (CEP Upgrade): "Regulatory cooperation activities means the efforts between the Parties to enhance regulatory cooperation in order to further domestic policy objectives, improve the effectiveness of domestic regulation in the face of increased cross-border activity and promote international trade and investment, economic growth and employment."

United States-Mexico-Canada Agreement (USMCA): "Regulatory cooperation means an effort between two or more Parties to prevent, reduce, or eliminate unnecessary regulatory differences to facilitate trade and promote economic growth, while maintaining or enhancing standards of public health and safety and environmental protection."

Source:www.whitehouse.gov/sites/whitehouse.gov/files/omb/inforeg/inforeg/eo_13609/eo13609_05012012.pdf; www.canada.ca/en/treasury-board-secretariat/services/regulatory-cooperation/learn-about-regulatory-cooperation.html; www.mbie.govt.nz/cross-government-functions/regulatory-stewardship/international-regulatory-cooperation; and (Kauffmann and Saffirio, 2021[34]).

IRC has become a critical dimension of regulatory quality and effectiveness, as illustrated by the inclusion of a principle on IRC in the 2012 Recommendation (OECD, 2012[35]). In the past two to three decades, in a context of continuous reduction in tariffs and rise of global value chains, trade policy makers have also paid increased attention to the costs accruing to traders from non-tariff measures (NTMs) and regulatory divergences across jurisdictions. As such, different tools of regulatory policy, including IRC, are embedded in the WTO context, in particular in the WTO frameworks on Technical Barriers to Trade (TBT) and the Application of Sanitary and Phytosanitary (SPS) (OECD/WTO, 2019[36]) (OECD, 2017[24]) and increasingly as horizontal chapters in bilateral and regional trade agreements (Kauffmann and Saffirio, 2021[34]).

However, terminology varies to a certain extent depending on the actors discussing it and the objectives it pursues (Box 1.6).

IRC encompasses a multiplicity of approaches, which are united by their focus on enhancing the interoperability of laws, regulations and regulatory frameworks. This includes a range of 'softer' activities beyond the development of rules, such as exchanging information and participating in international fora, which form the building blocks of rulemaking and regulatory co-operation. However, it is important to separate IRC from the other multiple forms of co-operation that may exist. In particular, precluded from the IRC definition are forms of co-operation that do not relate to or support the rule-making process, such as those involving the provision of development aid, project funding or capacity building.

Box 1.6. Regulatory policy, good regulatory practices and international regulatory co-operation: bridging the language gaps between regulatory and trade policymakers

Despite common interests in improving the effectiveness and efficiency of regulation, the regulatory community and the trade policy community tend to use different language and tools, relative to their respective mandates and scope of activities. This applies to the broad agenda itself, as exemplified in the examples of language in Table 1.1, as well as for the individual tools of regulatory policy.

Table 1.1. Terminology used in relation to regulatory policy

OECD	WTO TBT Committee	Other terminologies used in countries
Regulatory quality Regulatory reform Regulatory policy	Good regulatory practice	Better Regulation Smart regulation Regulatory fitness deregulation Paperwork reduction Regulatory management Regulatory governance Regulatory improvement Regulatory Coherence Simplification

Source: adapted from (OECD, 2015[37]).

In the context of the WTO, the SPS and the TBT Agreements in particular aim to ensure that technical regulations, conformity assessment procedures, standards and SPS measures are transparent, non-discriminatory and do not result in unnecessary barriers to trade. While GRPs and regulatory quality are not explicitly mentioned in these Agreements, GRPs are commonly referred to in the work of TBT and SPS Committees. The TBT Committee has recognised the importance of GRP for reducing technical barriers to trade, through "improved and effective implementation of the substantive obligations of the TBT Agreement."[1]

In the context of the TBT Agreement, regulatory co-operation is aimed at limiting costs arising from divergences in product regulations between countries, while respecting differences in regulatory objectives. In the TBT Committee, members have highlighted that regulatory co-operation can help achieve a better understanding of different regulatory systems and approaches to addressing identified needs, and can promote regulatory convergence, harmonisation, mutual recognition and equivalence, thereby contributing to the avoidance of unnecessary regulatory differences. IRC is recognised as an element of good regulatory practice.

[1] G/TBT/26, 13 November 2009, para. 5.
Source: (OECD/WTO, 2019[36]).

Given the variability in language and the importance to clearly separate IRC from the multiple other forms of international co-operation that may exist clearly point to the need for clear definitions and delineation of concepts. These OECD Best Practice Principles aim to help with such objective. Box 1.7 synthesises the key IRC concepts in short definitions.

Box 1.7. Glossary of key terms related to IRC

Due to the multiplicity of actors involved in IRC, the exact terminology used varies and is not subject to internationally agreed definitions. For the purpose of the RPC work on IRC, the following terms are used without prejudice of the meaning they can have in individual countries and international organisations, including the OECD:

- **International regulatory co-operation (IRC)** can broadly be referred to as *"any agreement, formal or informal, between countries to promote some form of co-operation in the design, monitoring, enforcement or ex-post management of regulation."* (OECD, 2013[11]).
- **International organisation.** The academic literature acknowledges their diversity and offers several classifications based on functions, membership or objective (OECD, 2016[28]). For the purpose of the Partnership of International Organisations for Effective International Rulemaking, the term has been defined by the OECD broadly to encompass a variety of organisations engaged in normative activities, i.e. the development and management of "rules" regardless of their mandate, sector, legal attributes or nature. These organisations share 3 critical features: 1) they generate rules, be they legal, policy or technical instruments/standards; 2) they rely on a secretariat; and 3) they are international in that they involve "representatives" from several countries.
- **International Standards.** The term used in this document follows the World Trade Organization TBT Committee Decision on international standards[1] which set out six principles for the development of international standards, including: i) transparency; ii) openness; iii) impartiality and consensus; iv) effectiveness and relevance; v) coherence; and vi) the development dimension. In addition, WTO case-law provides some guidance. According to such case law, for an instrument to be considered an "international standard" under the TBT Agreement it must both: constitute a "standard" (i.e. a document approved by a recognised body, that provides, for common and repeated use, rules, guidelines or characteristics for products or related processes and production methods, with which compliance is not mandatory) and be "international" in character, i.e. adopted by an international standardising body.[2]
- **International instruments.** The normative work of international organisations goes beyond international standards. Therefore, to encompass the broader range of legal and policy documents adopted by international organisations, and in line with the approach used in (OECD, 2019[38]) this document refers to the broader term of **international instruments** as covering legally binding requirements that are meant to be directly binding on the international organisations' members and non-legally binding instruments that may be given binding value through transposition in domestic legislation or recognition in international legal instruments. This broad notion therefore covers e.g. treaties, legally binding decisions, non-legally binding recommendations, model treaties or laws, declarations and voluntary international standards.[1]
- **International rulemaking (in the context of international organisations).** For the purpose of this document, and consistently with the analytical work led by the OECD on the topic since 2014 (OECD, 2019[38]),"international rulemaking" encompasses the design,

development, implementation and enforcement of international instruments (see above) by governments or other actors via the international organisations of which they are members, or by the Secretariats of the international organisations based on mandates received from their members, regardless of their legal status, effects or attributes and of the nature of the organisation (public or private). This definition does not prejudge the domestic use of this term by countries.

[1] This broader approach is chosen as it can be applicable regardless of the thematic/sectoral scope of the international standards. This differs from the approach of the SPS Agreement, which defines international standards, guidelines and recommendations based on whether they come from any of the following three international bodies: international standards for "food safety" established by the FAO/WHO "Codex Alimentarius Commission" (Codex); international standards for "animal health and zoonoses" developed by the "World Organisation for Animal Health" (OIE); international standards for "plant health" developed under the auspices of the "International Plant Protection Convention" (IPPC). For matters not covered by the above organizations, the SPS Agreement also allows for the possibility of the SPS Committee identifying "appropriate standards, guidelines and recommendations promulgated by other relevant international organizations open for membership to all Members".

[2] See, e.g. Appellate Body Report in US – Tuna II and Panel Report in Australia – Tobacco Plain Packaging (currently under appeal). The TBT Committee decision on the six Principles for the Development of International Standards, Guides and Recommendations (G/TBT/9, 13 November 2000, para. 20 and Annex 4) also played an important role for clarifying the meaning of "international standard" under the TBT Agreement (see e.g. Appellate Body Report in US – Tuna II , paras. 370-379 and 382, 384, and 394). The TBT Agreement refers to "relevant" international standards; the term relevant has been addressed by the Appellate Body in EC-Sardines. For further discussion on the "Six Principles", see pp. 80-81.

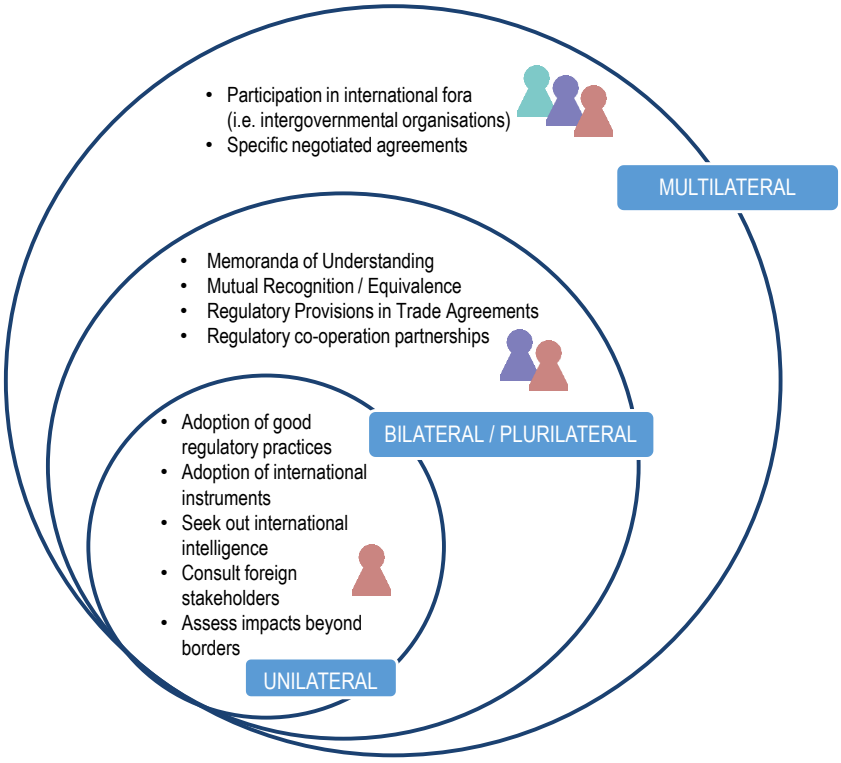
Source: (OECD, 2017[24]) (OECD, 2019[30]) (OECD/WTO, 2019[36]).

The variety of international regulatory co-operation approaches

OECD work shows the multiplicity of approaches to facilitate the interoperability of regulatory frameworks. They may cover activities from the exchange of information to the harmonisation of rules. They may focus on the stage preceding the development of rules – such as the evidence gathering – or apply to the regulatory delivery side (in enforcement/inspection for example). They may involve specific institutional arrangements or rely on peer to peer agreements. De facto, they take the form of a continuum of complementary mechanisms ranging from unilateral to international multilateral action (Figure 1.3), rather than a discrete set of mutually exclusive options (as illustrated by the New Zealand IRC Toolkit).

The complementarity of IRC mechanisms is well illustrated by the coexistence and layering of mechanisms at sector/policy issue level. The co-operation to address air pollution provides a good example encompassing the unilateral adoption of international environmental standards; bilateral memorandum of understanding (MoU) on data exchange, technical assistance and capacity building; and engagement in multilateral environmental programmes and fora, plurilateral research projects, and joint ministerial meetings (Kauffmann and Saffirio, 2020[21]). Competition law enforcement provides another illustration of the layering of IRC mechanisms in the same field, involving a mixture of competition and non-specific instruments, both formal and informal co-operation mechanisms between different levels of government (OECD, 2013[11]). Several IRC mechanisms also complement each other in the area of consumer protection enforcement co-operation – which relies on binding international agreements (such as high-level government-to-government agreements), non-binding memoranda of understanding and other agency-to-agency agreements, as well as informal exchanges through peer-to-peer agency networks (such as the International Consumer Protection Enforcement Network) and staff exchanges (OECD, Forthcoming[33]).

Figure 1.3. IRC mechanisms



Source: Adapted from OECD (2013), International Regulatory Co-operation: Addressing Global Challenges, OECD Publishing, Paris, https://dx.doi.org/10.1787/9789264200463-en.

Domestically, the interoperability of regulatory frameworks can be improved unilaterally by investing in the quality of regulation and integrating considerations of the international environment

Countries can do a lot domestically to improve the coherence of their regulatory frameworks with the international environment, build trustworthy institutions that can form the foundation of co-operation arrangements and establish the conditions and support for beneficial co-ordination with foreign jurisdictions. The range of practices and disciplines highlighted in the 2012 Recommendation and the 2005 APEC-OECD Integrated Checklist on Regulatory Reform (APEC-OECD, 2005[39]) provides a strong basis to improve the quality of domestic rulemaking and embed more systematic considerations of the international environment.

On this last point, principle 12 of the 2012 Recommendation promotes these unilateral practices likely to support the interoperability of regulatory frameworks and detailed in the Best Practice Principles, in short:

- Considering systematically the intelligence accumulated in other jurisdictions on similar issues to inform the rationale and range of potential options
- Adopting international instruments and other relevant regulatory frameworks when developing or updating laws and regulations, or detailing the rationale for diverting from them
- Facilitating the engagement of stakeholders beyond the jurisdiction to gather information about the implications of domestic regulation
- Assessing the range of impacts (including on international flows and outside the jurisdiction) of laws and regulations once they are adopted and their divergence with international good practice.

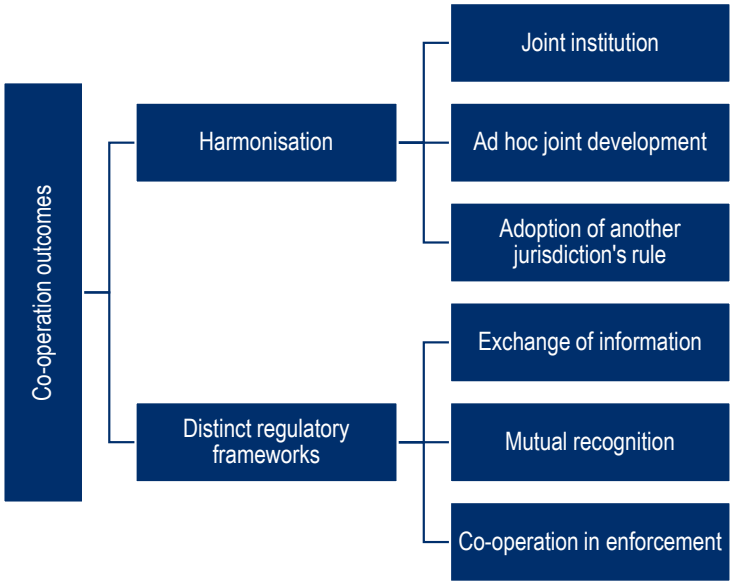
These unilateral good regulatory practices provide an essential first step and building block of IRC – beyond helping to avoid the unnecessary regulatory divergences through better informed rulemaking, they foster the mutual knowledge and confidence needed across jurisdictions for stronger forms of IRC. They, however, do not in themselves necessarily ensure the expected outcome of IRC, which may require going beyond unilateral action and entering bilateral, regional or international forms of co-operation.

Recent OECD work on IRC responses to the COVID-19 crisis shows that some governments have opted to unilaterally uphold technical standards for medical devices issued by competent authorities in other jurisdictions (OECD, 2020[1]). Such unilateral recognition has proved a flexible and rapid option for countries seeking to secure the availability of critical medical products. As an example, the US Food and Drug Administration (US FDA) waived in April 2020 certain regulatory requirements to authorise healthcare personnel to use the disposable respirators (masks) that met requirements approved in other countries, even if not approved by the National Institute for Occupational Safety and Health (NIOSH) (US Food and Drug Administration, 2020[67]). Health Canada has set up simplified importation and sale procedures on medical devices necessary for use in relation to COVID-19, if they have been granted market approval by a foreign regulatory authority (Health Canada, 2020[68]).

There is a multiplicity of potential co-operation modalities and institutional arrangements, at the bilateral, regional and multilateral levels

There is no simple way to illustrate the range of possible co-operation approaches, all the more that they may combine different features and vary across sectors and countries – the range of IRC mechanisms and their complexity is described in details in (OECD, 2013[11]) and the accompanying case studies (listed in Annex B). One way to capture the broad variety of mechanisms in a schematic way is to differentiate between those that involve the harmonisation of rules as the basis for interoperability and those that preserve the variety of regulatory frameworks and seek to build bridges across them. They are represented in a simplified and not exhaustive way in Figure 1.4.

Figure 1.4. Non-exhaustive categorisation of types of IRC by outcome



Regulatory harmonisation

Regulatory harmonisation (defined as the adoption of joint rules across two or more jurisdictions) does away with regulatory divergence between participating countries at its very root, i.e. in the design stage. It should thereby significantly increase the effectiveness and efficiency of regulation across partners by limiting the margin for interpretation and the frictions arising from divergences. Examples include the development of Regulations and Directives in the European Union, as exemplified by the evolution of the European Union Energy Regulation (OECD, 2013[31]), as well as the harmonisation case described in the Study of the Equipment Energy Efficiency (E3) Programme between Australia and New Zealand (Kauffmann and Saffirio, 2020[21]).

As illustrated by these examples, "regulatory harmonisation" covers in practice different realities and different depths of co-operation, i.e. the adoption of another jurisdiction's rule, the joint adoption of a common rule through deliberative process in a joint institution, the joint adoption of common rules without the involvement of a joint institution, or the joint reference to a third rule-maker (typically an international organisation). There is also a misperception in regulatory harmonisation that common rules mean seamless enforcement, which is rarely the case. EU Directives for example are developed through joint institutions and mean to apply in all EU members. However, contrary to EU regulations that are directly applicable, their implementation involves their transposition in domestic legislation – leaving some margins for divergence – and empowers the EU member states for their enforcement. OECD work on regulatory enforcement and inspections show that there can be significant differences in enforcement approaches that may create important costs to regulated entities and/or affect the effectiveness of regulation.

The work of the Partnership of International Organisations for Effective International Rulemaking shows that the majority of international instruments (meant to provide for regulatory harmonisation) allow for flexible implementation and adaptation to specific context – they are rarely applicable directly and a significant share is voluntary in nature (see below).

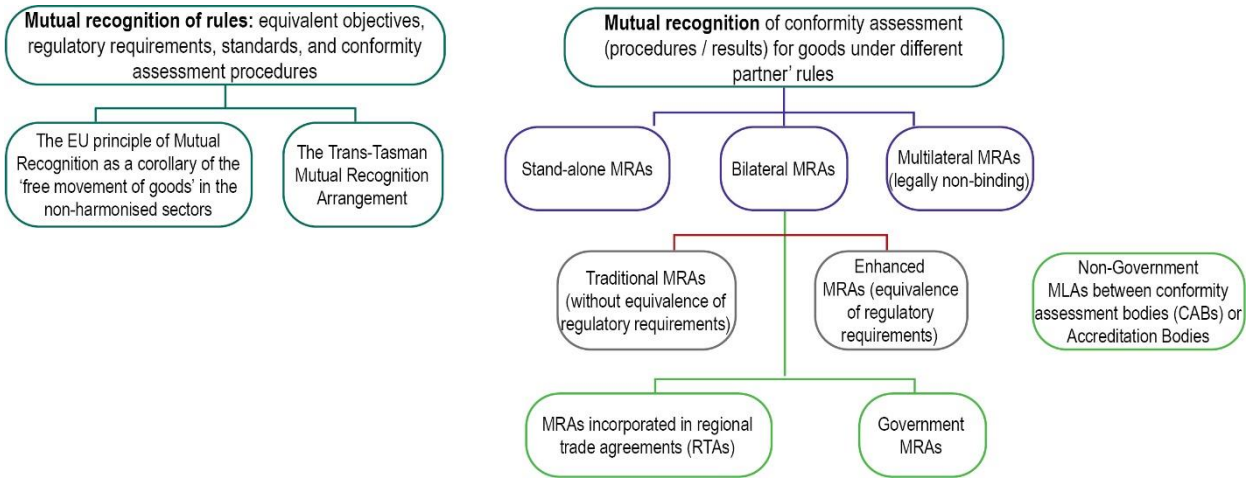
This begs the question of why not apply one single regulation and delivery to all? Harmonisation can come with important costs. It limits the regulatory sovereignty of countries. In its extreme forms, public administrations no longer develop regulation and standards at the domestic level, but transpose international measures. The development of joint approaches may fail to account for the variety of specific conditions and to satisfy the needs and expectations of singular domestic administrations and citizens. Harmonisation involves by definition uniformity and this may not be the best solution in all contexts. This may also stifle innovation in regulatory approaches.

There is therefore a balance to strike between full regulatory harmonisation (that can be caricatured as one rule, one enforcement) that effectively erases the costs of (even small) differences in interpretation and application of rules and the flexibility that a more lax system of adoption of soft international instruments may allow.

Equivalence/mutual recognition: the alternative to regulatory harmonisation?

A number of IRC mechanisms different to regulatory harmonisation promote regulatory alignment while allowing room for regulatory diversity; these include "equivalence" and mutual recognition mechanisms. There is a wide spectrum of mutual recognition modalities identified in (Correia de Brito, Kauffmann and Pelkmans, 2016[40]), ranging from the recognition of regulatory outcomes of different rules to the more limited recognition of conformity assessment results embodied in different agreements (Figure 1.5). Mutual recognition of rules is rarely used except in the European Union, between Australia and New Zealand in the Trans-Tasman Mutual recognition Arrangement and in a number of specific limited cases (such as the EU-US organic equivalence).

Figure 1.5. Spectrum of mutual recognition modalities



Source: (Correia de Brito, Kauffmann and Pelkmans, 2016[40]).

In most cases, countries adopt recognition of their conformity assessment procedures, i.e. the capability of conformity assessment bodies to test and certify against the rules and procedures of another country. The purpose of these Mutual Recognition Agreements (MRAs) is to facilitate market access by eliminating duplicative testing and certification or inspection, reducing the uncertainty about a possible rejection and shortening 'time-to-market'.

The OECD Mutual Acceptance of Data (MAD) presents another case where the "recognition" focuses on chemical test data. It shows the potential benefits of mutual recognition of results when scaled up to the multilateral level (OECD, 2013[13]). There are also examples of co-operation taking place through mutual assistance in the enforcement stage as established by the study of co-operation among competition authorities (OECD, 2013[13]), and in the area of consumer protection (OECD, Forthcoming[33]).

There is limited systematic and quantified evidence on the performance of mutual recognition. In the area of the recognition of the equivalence of regulatory outcomes, the Trans-Tasman Mutual Recognition Arrangement stands out with its regular assessments carried out by the Australian Productivity Commission.[3] There is also some academic literature on MRAs. It shows that they do away with the need for multiple conformity assessments and shorten the time needed to trade goods across borders. They have some positive impacts on trade especially in science-driven sectors with long global value chains, where sufficient economic gains are expected such as telecoms equipment, machinery and electronic equipment. However, MRAs are also costly to negotiate and to maintain. They require the continuous co-operation between national regulators. (Correia de Brito, Kauffmann and Pelkmans, 2016[40]) shows that MRAs only deliver in sectors with limited regulatory divergence (for example where a strong international standard provides for common regulatory grounds such as in the electronic/electric area) and in country relationships with high levels of trust and confidence in the respective regulatory and administrative systems.

The role for trade agreements?

Countries have been using trade agreements as a vehicle to promote the effectiveness and efficiency of regulation by including provisions related to good regulatory practices and international regulatory co-operation (OECD, 2017[24]). This is not a new trend. Over the past decades, a number of agreements have included language related to GRP and/or IRC mechanisms, in particular reflecting and sometimes deepening WTO disciplines set out in the TBT and SPS Agreements and Committees (OECD/WTO, 2019[36]). These provisions promote traditional good regulatory practices around transparency and

evidence based rule-making. Trade agreements also provide a path for mutual recognition and act as vehicles for other mechanisms that promote dialogue and encourage parties to the agreements to initiate co-operation on regulatory matters. In addition, some agreements also include annexes or chapters to include sector-specific commitments around regulatory management tools, use of international standards, implementation of mutual recognition or other forms of regulatory alignment.

More recently, trade agreements have become more detailed and ambitious in the content and scope of GRP and IRC provisions. In particular, a number of trade agreements have incorporated dedicated chapters on GRPs and/or IRC (Kauffmann and Saffirio, 2021[34]). While, it is too early to assess the overall impact of these dedicated chapters for regulatory quality and IRC, a number of considerations can already be highlighted based on their content and initial implementation steps.

The level of ambition of these standalone chapters is largely connected to the state of play of regulatory policy in partner countries. Yet their increasing incorporation in trade agreements signals the interest of countries to systematise regulatory policy and co-operation. Further, the regulatory practices promoted by these horizontal chapters are strongly aligned with the 2012 Recommendation and the APEC-OECD Checklist, which supports consistency in approaches across jurisdictions.

These standalone chapters consistently advance regulatory impact assessment, stakeholder engagement and consideration of international standards. Yet, notably, a number of them go further and expand into new GRPs included in the 2012 Recommendation and recent OECD work, such as *ex post* evaluation, regulatory oversight and co-operation on regulatory enforcement.

These chapters build on and aim to complement existing rulemaking practices in trading partners. A majority of them create standing committees to monitor their implementation and/or promote regulatory co-operation among parties. While it is still early to assess their effects, these new bodies provide an opportunity to bring together relevant players working on improving regulatory effectiveness across policy communities.

The role of international organisations in IRC

International organisations (IOs) provide for an opportunity to co-operate on a larger scale than the bilateral approaches to IRC. They have been the main institutional form used to underpin multilateral regulatory co-operation for the past century [(OECD, 2013[11]) and (OECD, 2016[28])]. They offer platforms for continuous dialogue on and anticipation of new issues; help establish a common language; facilitate the comparability of approaches and practices; develop international instruments; and offer resolution mechanisms in case of disputes. They may take different forms: international, regional, groups of like-minded institutions or sharing common issues and priorities.

The international rulemaking landscape is dynamic with multiple actors and a fast-growing body of international instruments. It has evolved significantly over the years to accommodate new actors and forms of IOs. (OECD, 2016[28]) and (OECD, 2019[30]) classify the diverse international rule-makers in three broad categories: inter-governmental organisations (IGOs), trans-governmental networks (TGNs) and private standard-setting organisations. However, despite differences in nature, membership, mandate and focus, IOs share strong common features in developing and maintaining the body of international rules and standards: the pursuit of consensus in decision-making; the extension of traditional membership to new geographic zones and non-governmental actors; and the roles of their secretariat as information hubs.

IOs adopt a wide variety of international instruments with external normative value, which can be classified in several families with various attributes including legal stringency (OECD, 2019[30]). Nevertheless, international rulemaking functions largely as a system and not just a collection of actors and rules. Instruments serve as building blocks of a broader framework aimed at “regulating” specific areas. The vast ecosystem of IOs and rules is both a reflection of and a response to the increasing complexity of the modern world, the large number of issues requiring an international response and the variety of

constituencies and situations. De facto, countries belong to 50 international organisations or more (OECD, 2013[11]). Evidence from (OECD, 2016[28]) shows that the international organisations who participated in the report had produced some 70 000 international instruments spanning a broad range of policy sectors.

But, with increasing complexity may come a perception of duplication, over-bureaucracy, inaccessibility, lack of transparency and accountability, weak implementation and loss of control. IOs are not immune from a context where trust in public institutions, evidence, and expert advice is deteriorating across all countries. In this context there is a need to improve the transparency, relevance and consistency of international rulemaking and ensure that it works as intended: as an instrument for managing globalisation for the well-being of all. With this objective in mind, the Partnership of International Organisations for Effective International Rulemaking aims to support IOs and their constituencies to address weaknesses in the implementation of international rules; promote evidence-based and transparent rulemaking; and encourage greater co-ordination among international rule makers.

Countries/domestic policy makers have a key role to play to ensure the quality of international rulemaking, through their active participation in international organisations, implementation of international instruments in domestic frameworks and role as relay of information on use and impacts of these instruments. This role is investigated in the Review of International Regulatory Co-operation of Mexico (OECD, 2018[41]) and the Review of International Regulatory Co-operation of the United Kingdom (OECD, 2016[28]).

Notes

[1] The wealth of co-operation mechanisms across regulators from different countries was highlighted in the detailed reviews of international regulatory co-operation carried out in Mexico and in the UK and provide practical examples of the binding and non-binding undertakings that may link them (OECD, 2018[41]) and (OECD, 2016[28]).

[2] In particular the development of an IRC toolkit by New Zealand.

[3] The latest is available at: https://www.pc.gov.au/inquiries/completed/mutual-recognition-schemes#report.

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