Achieving better regulation through international regulatory cooperation

A work stream of the OECD Regulatory Policy Committee

Céline Kauffmann, OECD Regulatory Policy Division

23rd Session of the Working Party on Regulatory Cooperation and Standardization Policies
18 November 2013, Geneva
IRC is the subject of **Point 12 of the Recommendation on Regulatory Policy and Governance**: *In developing regulatory measures, give consideration to all relevant international standards and frameworks for co-operation in the same field and, where appropriate, their likely effects on parties outside the jurisdiction*

**A publication released in May 2013** summarising the knowledge to date on IRC based on a survey & 10 case studies: Competition law enforcement, Chemical safety, Consumer product safety, Coordination of tax treaties, Canada-US Regulatory Cooperation Council, EU Energy regulation, Banking supervision, Transnational private regulation, Transboundary water management
Any agreement or organisational arrangement, formal or informal, between countries (at the bilateral, regional or multilateral level) to promote some form of cooperation in the design, monitoring, enforcement, or ex-post management of regulation.

⇒ IRC is not restricted to its strict equivalence with international legal obligations, but also includes non-binding agreements and voluntary approaches.

⇒ IRC is not limited to the design phase of the regulatory governance cycle.
## Identification of 11 IRC mechanisms

| Integration / Harmonisation through supra national institutions (EU) | Specific negotiated agreements (treaties / conventions) | Formal (umbrella type) regulatory co-operation partnerships (US-Canada RCC) |
| Inter governmental organizations (OECD) | Regional agreements with regulatory provisions (FTA) | Mutual recognition agreements |
| Trans-governmental networks of regulators (ICN, Basel) | Formal requirements to consider relevant frameworks in other jurisdictions in the same field | Recognition and incorporation of international standards |

- **Soft law**: principles, guidelines
- **Dialogue**: Informal exchange of information
Key trends and highlights

• Growing IRC is supported by widening range of IRC mechanisms.

• Often regulatory frictions to trade & investment arise not from diverging rules but from different enforcement mechanisms.

• The shift away from complete harmonisation of rules to more flexible regulatory cooperation mechanisms
  – The development of instruments that preserve the regulatory power of states (mutual recognition agreements)
  – The supporting role of soft law and informal cooperation and of international institutions

• The multiplication of state and non-state actors
  – The shift from a unitary model to multi modal regulatory cooperation
  – The rise of private regulation
Diffusion of government IRC responsibilities

(Number of countries with)

- An explicit, published policy or a law on IRC: 5 Yes, 18 No
- A definition of IRC across all levels of government: 2 Yes, 21 No
- A classification to group the different IRC mechanisms: 3 Yes, 20 No
- A single ministry or agency in charge of IRC: 4 Yes, 19 No
The costs and benefits of IRC

- The paucity of quantitative evidence on benefits, challenges and costs
  - difficulty to come up with detailed information on regulatory divergences and their concrete impact
  - qualitative elements are likely to represent an important part of the benefits

- The absence of a normative framework to assess costs and benefits
  - quasi absence of systematic approaches to costs and benefits of IRC at country level
  - sector level information on benefits and costs seems to be underdeveloped (except chemical safety)
  - ad hoc nature of past experiences, limited stock taking of past failures and successes
Proposed classification

Benefits

- Economic gains
- Managing risks and externalities across borders
- Greater administrative efficiency
- Knowledge flow

Costs and challenges

- Costs of additional layer of coordination
- Specificity of regulatory set up
- Political economy of cooperation
- Implementation challenges
Perceived challenges to IRC

- Lack of regulatory flexibility
- Reduced regulatory sovereignty
- Legal obstacles
- Unequal distribution of costs and benefits
- Reduced regulatory competition
- Lower quality of regulations
- Increased administrative costs
- Costs of additional layer of coordination on economic activity

Graph showing perceived importance:
- Very important
- Important
- Not so important
Next steps

1. Support the implementation of Principle 12 of the OECD Recommendation on Regulatory Policy and Governance

2. Deepen the analysis of the typology of IRC mechanisms and related benefits / costs - analyse the potential of mutual recognition agreements

3. Take stock of IRC in the framework of trade agreements

4. Review the legal and other bottlenecks to information sharing and the practices to overcome them.

5. Take stock of rule making practices of IOs
Thank you

Contact: celine.kauffmann@oecd.org
www.oecd.org/gov/regulatory-policy/irc.htm