



The Contribution of International Organisations to a Rule-Based International System

Key Results from the partnership
of international organisations
for effective rulemaking

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ACRONYMS OF SELECTED INTERNATIONAL ORGANISATIONS

| | | | |
|-----------------|----------------------------------------------------------------------------------------------------|-------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------|
| AHWP | Asian-Harmonization Working Party | ITU | International Telecommunication Union |
| APEC | Asia-Pacific Economic Co-operation | IUCN | International Union for the Conservation of Nature |
| ASTM | ASTM International | NATO | North Atlantic Treaty Organization |
| BIPM | Bureau International des Poids et Mesures | OAS | Organization of American States |
| BRS Conventions | Basel Convention (BC), Rotterdam Convention (RC) and Stockholm Convention (SC) | OECD | Organisation for Economic Co-operation and Development |
| CARICOM | Caribbean Community | OIE | World Organisation for Animal Health |
| CBD | Secretariat of the Convention on Biological Diversity | OIF | International Organisation of La Francophonie |
| CITES | Secretariat to the Convention on International Trade in Endangered species of Wild Fauna and Flora | OIML | International Organization of Legal Metrology |
| CoE | Council of Europe | OIV | International Organisation of Vine and Wine |
| COMESA | Common Market for Eastern and Southern Africa | OPCW | Organisation for the Prohibition of Nuclear Weapons |
| EC | European Commission | OPEC | Organization of Petroleum Exporting Countries |
| ESCWA | United Nations Economic and Social Commission for Western Africa | OSCE | Organization for Security and Cooperation in Europe |
| FAO | Food and Agriculture Organization of the United Nations | OTIF | Intergovernmental Organisation for International Carriage by Rail |
| IAEA | International Atomic Energy Agency | OZONE Secretariat | Secretariat for the Vienna Convention for the Protection of the Ozone Layer and for the Montreal Protocol on Substances that Deplete the Ozone Layer. |
| IAF | International Accreditation Forum | PIC/S | Pharmaceutical Inspection Co-operation Scheme |
| IAIS | International Association of Insurance Supervisors | SAICM | Strategic Approach to International Chemicals Management |
| IATA | International Air Transport Association | SELA | Latin American and Caribbean Economic System |
| ICANN | The Internet Corporation for Assigned Names and Numbers | SIECA | Secretariat for the Economic Integration of Central America |
| ICN | International Competition Network | UNCITRAL | United Nations Commission on International Trade Law |
| ICRC | International Committee of the Red Cross | UNDP | United Nations Development Programme |
| IEA | International Energy Agency | UNEP | United Nations Environment Programme |
| IEC | International Electrotechnical Commission | UNECE | United Nations Economic Commission for Europe |
| IFAC | International Federation of Accountants | UNFCCC | United Nations Framework Convention on Climate Change |
| IFRC | International Federation of Red Cross and Red Crescent | UNHCR | United Nations Office of the High Commissioner to Refugees |
| IHO | International Hydrographic Organization | UNIDO | United Nations Industrial Development Organization |
| ILAC | International Laboratory Accreditation Cooperation | UNODC | United Nations Office on Drugs and Crime |
| IMDRF | International Medical Device Regulators Forum | UNWTO | World Tourism Organization |
| ILO | International Labour Organization | UPU | Universal Postal Union |
| IMF | International Monetary Fund | WADA | World Anti-Doping Agency |
| IMO | International Maritime Organisation | WCO | World Customs Organization |
| INTERPOL | International Criminal Police Organization | WHO | World Health Organization |
| IOM | International Organization for Migration | WIPO | World Intellectual Property Organization |
| IOSCO | International Organization of Securities Commissions | WMO | World Meteorological Organization |
| ISO | International Organization for Standardization | WTO | World Trade Organization |



International rulemaking: *more crucial than ever*

All countries are increasingly faced with issues that transcend national borders, and international organisations (IOs) play an important role in helping address them. IOs bolster and complement national institutions by promoting and developing common solutions at the international level.

IOs take different forms: international, regional, groups of like-minded countries or institutions sharing common issues and priorities. They underpin collective action in different ways, including through developing and managing common rules through a wide variety of international instruments.

Compared to other approaches to co-operation on rules (Figure 1), such as bilateral agreements between countries, IOs provide for an opportunity to co-operate on a larger scale. 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 legal and policy instruments; and offer resolution mechanisms in case of disputes. The work of IOs has led to important global achievements.

In today's globalised economy, cross-border issues are becoming increasingly complex and challenging. Multi-dimensional, transnational policy issues include tackling climate change and other environmental problems, managing health threats such as pandemics and antimicrobial resistance, fighting tax evasion and avoidance, strengthening financial market and economic stability, underpinning fair trade, and addressing the impacts of new technologies that erase distances and borders, among others.

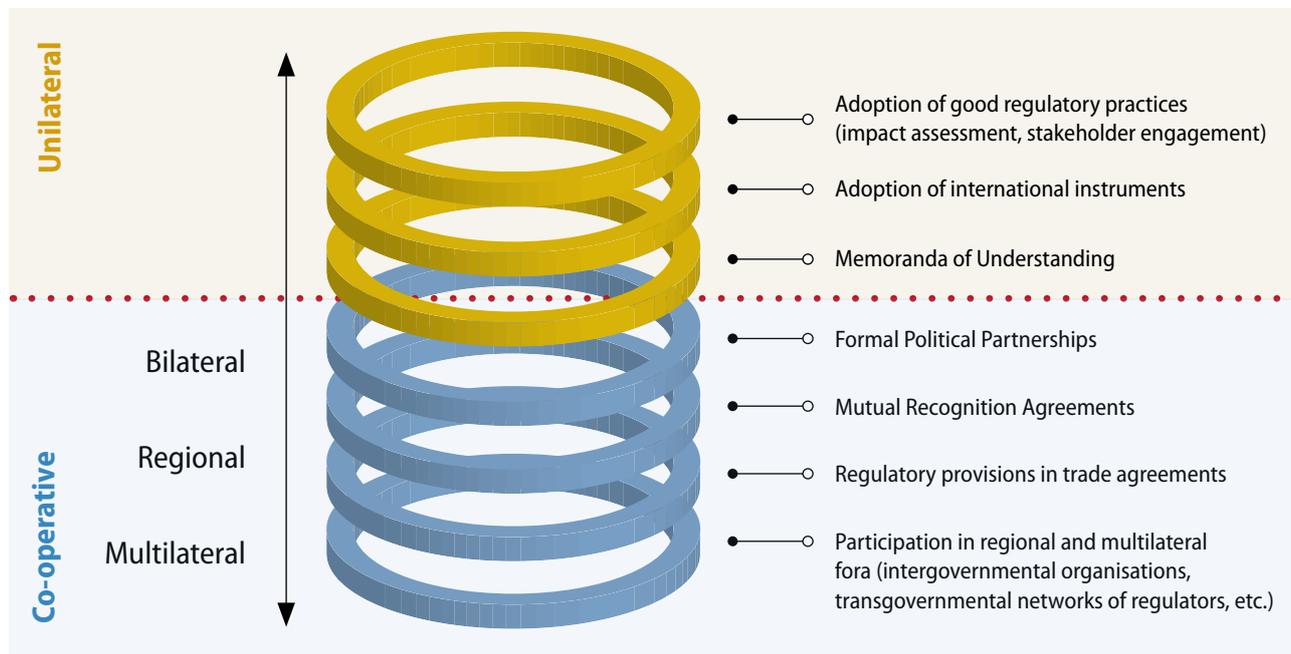
Such issues cannot be addressed effectively through domestic action alone, neither can they be solved by IOs without the involvement of their constituencies. They require concerted approaches, including on rules set in various jurisdictions to frame behaviours of government, businesses and citizens. Consistency in rules among

KEY TERMS AND DEFINITIONS

"International rulemaking" is understood broadly as encompassing the entire rulemaking cycle, from the design and development of international instruments to their implementation and enforcement. Consistently with the analytical work led so far, and to reflect the breadth of normative activity of various IOs, the term **"rules"** encompasses both legal and policy instruments developed by IOs, regardless of their legal effects or attributes and of the nature of the IO (public or private). They thus range from legally binding instruments to different types of non legally-binding instruments and voluntary approaches.

There is no agreed definition of **"international organisation"**. The academic literature acknowledges the diversity of IOs and offers several classifications based on functions, membership or purpose (OECD, 2016). For the purpose of the IO Partnership, the term has been defined 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.

Figure 1. THE RANGE OF COUNTRY APPROACHES TO GREATER CONSISTENCY OF RULES



Based on OECD (2013), *International Regulatory Co-operation: Addressing the Challenges of Globalisation*

countries also helps reduce costs and improve the conditions for cross-border transactions. Even when domestic solutions are more appropriate, concerted action can help gather essential information and share practices.

The world of IOs is rich and varied, engaging in normative activities that differ in scope, reach and status. IOs share many features in their rulemaking practices, operational modalities, as well as in the challenges, they face in remaining relevant, efficient and transparent.

The variety in IOs is matched by the broad range of normative instruments they develop. These rules form the critical pillars of an effective global governance system. However, the multiplicity of instruments may

be difficult to navigate for users, including the policy makers and legislators that may have to implement them in their own jurisdictions. Thus, it is crucial that these rules be clear, coherent and of high quality.

To this end, the OECD launched a voluntary partnership in 2014 bringing together some 50 secretariats of IOs (IO Partnership) to promote and discuss the conditions for greater quality, effectiveness and impact of international rules, regardless of their substantive scope. This collective effort has led to an unprecedented collection of information on the rulemaking activities of IOs and exchange of practices and tools on implementation, stakeholder engagement, evaluation and co-ordination of international instruments.

SOME ACHIEVEMENTS OF INTERNATIONAL CO-ORDINATION ON RULES

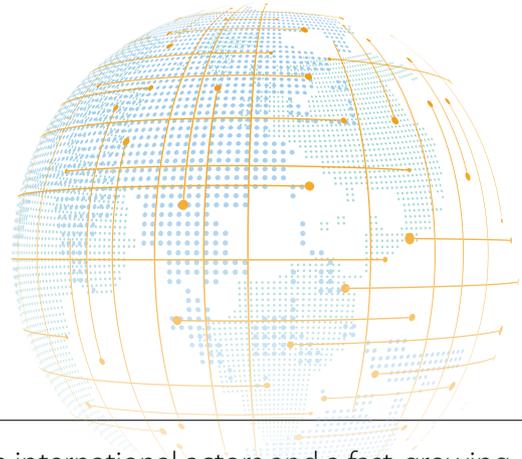
The eradication of smallpox could not have been achieved without collective action led by the World Health Organization (WHO). The smallpox vaccine was developed in the 19th century but it was only in 1980, after 20 years of joint global action, that the disease was declared eradicated.

The Ozone layer preserved due to international agreement between 197 Parties. The Montreal Protocol on Substances that Deplete the Ozone Layer led to the reduction

of over 97% of all global consumption of controlled ozone depleting substances.

The Mutual Acceptance of Data system of the Organisation for Economic Co-operation and Development (OECD) helps governments and industry save more than EUR 309 million per year through co-operation on chemical testing and the harmonisation of chemical safety tools and policies across jurisdictions.

The international rulemaking landscape



The global rulemaking landscape is dynamic with multiple international actors and a fast-growing body of normative instruments. It has evolved significantly over the years to accommodate new actors and forms of IOs. This dynamism shows capacity and flexibility to adapt to new issues, geopolitical evolutions and the fast pace of innovation and technological change. In order to sample this diversity, the IO Partnership has surveyed the rulemaking of IOs in 2015 and 2018.

Despite differences in mandate and focus, evidence from these two surveys shows that the IOs that are part of this landscape share strong common features in developing and maintaining the body of international instruments: the pursuit of consensus in decision-making; the extension of traditional membership to new geographic zones and non-governmental actors; and, to some extent, the roles of their secretariat.

TYPES OF INTERNATIONAL ORGANISATIONS

A wide range of normative IOs has been established over the past century (Figure 3). Three broad categories of IOs stand out: inter-governmental organisations (IGOs), trans-governmental networks (TGNs) and private standard-setting organisations. There are also a wealth of other forms of IOs with normative activities, less

DATA COLLECTION ON THE LANDSCAPE OF INTERNATIONAL RULEMAKING: THE 2015 AND 2018 IO SURVEYS

In 2014-15, the OECD carried out a survey of 50 IOs, classified for the purpose of analytical work in: IGOs (32), private standard-setting organisations (5), secretariats of international conventions (4), and TGNs (9). This work mapped out:

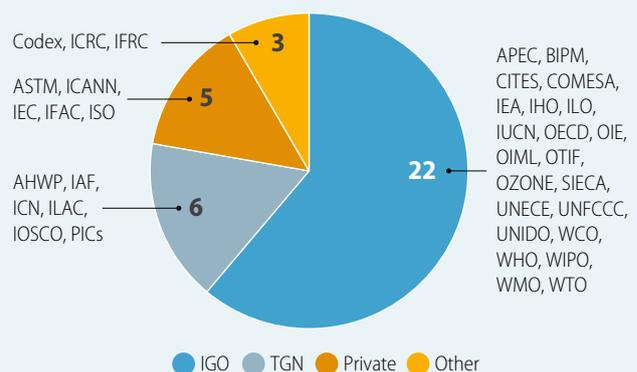
- How IOs provide for co-operation on rules
- Their governance and operational modalities
- Their procedures to encourage the implementation of normative instruments and to monitor their impacts
- The tools/procedures used to ensure the quality of their normative activities
- The broader context and the main lessons learnt in terms of success factors and challenges.

This data collection was analysed in *International Regulatory Co-operation: the Role of International Organisations in Fostering Better Rules of Globalisation*, the first comprehensive overview of the rulemaking practices of IOs.

This publication identified 5 areas for further analysis and action to promote greater quality, effectiveness and impact of international rules: 1) Understanding the variety in international norms and their respective benefits/challenges; 2) Strengthening the implementation of IO instruments; 3) Ensuring efficient stakeholder engagement; 4) Developing a greater culture of evaluation of IO instruments; and 5) Maximising the opportunities for co-ordination across IOs.

These areas became the subject of more in-depth discussions among IOs as part of the IO Partnership in 2017-2018 and the key focuses of a new survey exercise in 2018. As of end-December 2018, 36 IOs had responded to the survey, among which 22 IGOs (including secretariats of international conventions), 6 TGNs, 5 private standard setters and 3 others.

Figure 2. RESPONDENTS TO THE 2018 IO SURVEY



easy to classify because of the diversity of their nature, membership and activities.

IGOs are classical IOs created by “a treaty or other instrument governed by international law and poss[ess] [their] own international legal personality” (ILC, 2011). Their full members are primarily states and, in some cases, other IGOs or even non-governmental actors. Some may have universal membership. Others limit membership using a number of criteria, such as geographical location or shared values. IGOs developed fast in the 1950s and 1960s.

TGNs are more recent organisations (Figure 4) that differ from IGOs by their membership, legal basis, and the nature of their decisions. They typically involve specialised units of national governments (principally ministries and regulatory agencies), but also non-governmental actors such as private sector organisations

or technical experts. They are established by voluntary agreements among regulators and generally described as “networks” because of their “loosely-structured, peer-to-peer ties” (Raustiala, 2002). They make non-legally binding decisions and usually rely on member agencies to implement decisions within their respective jurisdictions.

Private standard-setting organisations are generally created under domestic law and composed of non-governmental actors as well as of governmental agencies. Some of them date back to the end of the 19th century. They play an increasingly important role, particularly those that may be considered as “international standardising bodies” within the context of the World Trade Organization (WTO) Agreement on Technical Barriers to Trade (TBT) which requires countries to base their national measures on the relevant international standards.

Figure 3. YEAR OF ESTABLISHMENT OF 65 IOS CONNECTED TO THE IO PARTNERSHIP

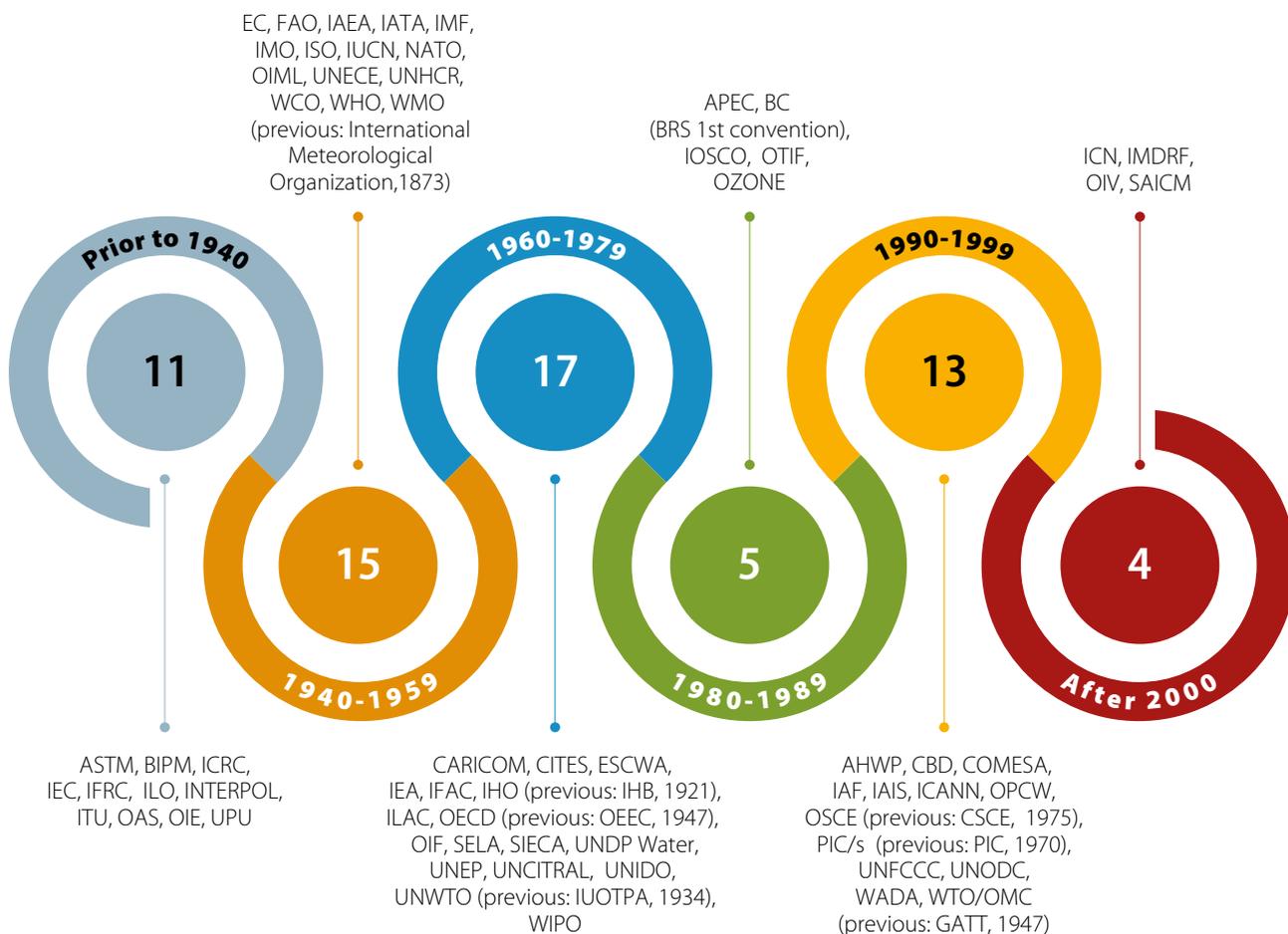
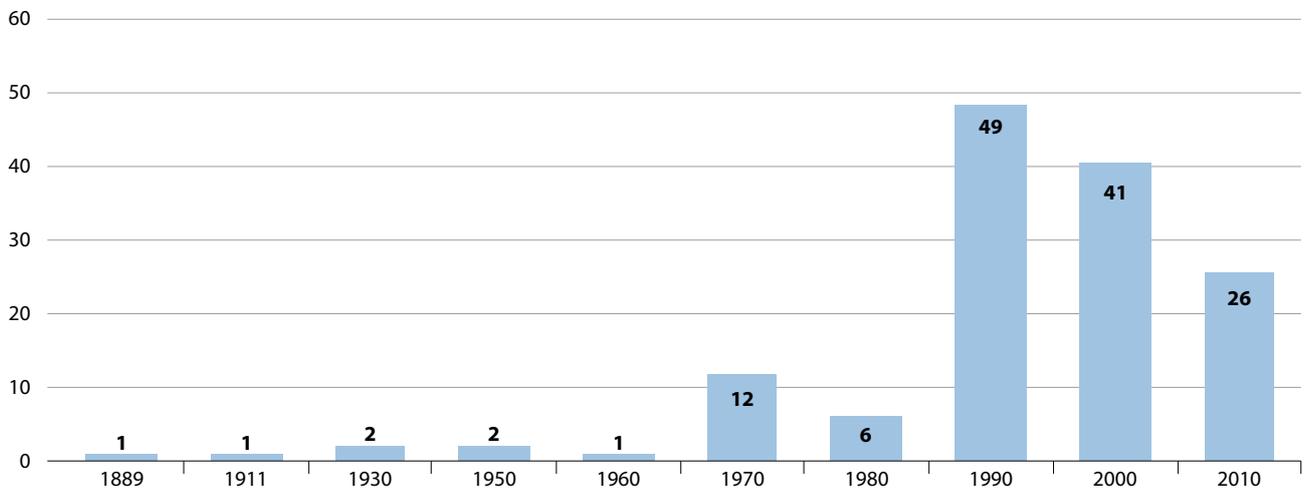


Figure 4. NUMBER OF TRANS-GOVERNMENTAL NETWORKS OF REGULATORS ESTABLISHED BY DECADE



Source: "The contribution of trans-governmental networks of regulators to international regulatory co-operation", *OECD Regulatory Policy Working Papers*, No. 10, OECD Publishing, Paris, <https://doi.org/10.1787/538ff99b-en>

New forms of IOs are emerging from existing models and challenge the definition of what constitutes an international organisation (Alvarez, 2017). They borrow one or more features from different types of IOs. Their existence underlines "the proliferation of IOs and other institutions exercising public power or authority in global governance, accompanied by various forms of institutional differentiation and decentralization" (Kingsbury and Casini, 2009).

Even IGOs may incorporate traits of other organisations. IUCN, for instance, composed of states like an IGO, also shares the membership characteristics of TGNs (including government agencies, NGOs, business associations, academic institutions and Indigenous Peoples' Organisations) and develops technical standards like a standard-setting organisation.

KEY GOVERNANCE FEATURES OF INTERNATIONAL ORGANISATIONS ENGAGED IN RULEMAKING ACTIVITIES

There is a significant diversity in IO governance arrangements and operational modalities (OECD, 2016). IOs vary in membership size. Membership is considerably larger in open IGOs and private standard-setting organisations (which seek a wide acceptance of their standards); and more limited for TGNs (which are focussed on a specific area of interest).

IOs also differ in the nature of their members. Although with variations, IGOs are mainly composed of States; TGNs of regulatory agencies or other public authorities; and private standard-setting organisations of public,

private or mixed entities. IOs generally distinguish between full members who enjoy the full array of rights and obligations and other participants with a more limited standing, e.g. no voting right. These participants may be non-member States, other IOs, NGOs, academics, or more generally all interested parties in the fields covered by the IO. They can be partial members, associates/affiliates or observers.

Despite their differences, IOs share strong common features. Their membership has been extended to new geographic zones and to a broader range of actors. Non-governmental actors are more and more involved in rulemaking activities. A majority of IGOs have established procedures to allow non-members to commit (through adherence or endorsement) to their instruments.

Most IO governance structures also follow the same basic model. A plenary supreme organ decides on major policy and operational issues. An executive organ meets frequently to make decisions on the implementation of the major policy and operational decisions. Subsidiary bodies assist the supreme and executive organs in specific administrative or technical areas. A secretariat is tasked with the administrative management of the organisation, notably support for meetings, linking areas of work across organs, carrying out consultations and other consensus building activities. Often, the secretariat also carries out the substantive functions such as drafting proposals for consideration by members, providing independent data collection, research and analysis, and monitoring and reviewing the implementation of the organisation's instruments.



IOs generally pursue consensus in decision-making for substantive matters. Consensus allows IOs to adopt a proposal in the absence of objection and without a formal vote. It provides IOs with flexibility to adopt their instruments more easily, but is not without challenges. A majority vote is usually used when every reasonable effort to come to an agreement has been made, but ultimately failed.

TYPES OF INTERNATIONAL INSTRUMENTS ISSUED BY IOS

IOs adopt a wide variety of international instruments with external normative value, most of which are non legally-binding (Figure 5). A single organisation may develop a broad range of instruments. This heterogeneity is explained by the diversity in the types of IOs and their activities, as well as their constant need to adapt and improve the way they operate. Some

organisations, in particular TGNs and private standard-setters, produce fewer types of instruments than IGOs.

With the exception of treaties, which are defined by international law, there is no common denomination or definition of the various international instruments produced by IOs. This results in multiple terms used to qualify sometimes similar instruments, while a single label may cover instruments with different attributes.

It is nevertheless possible to identify patterns across various instruments adopted by IOs and to group them into broad families with shared characteristics. There is significant fluidity and overlaps between families. IO instruments form a continuum rather than a series of distinct elements: between legally binding and voluntary tools, between policy and technical standards, between normative and guidance documents.

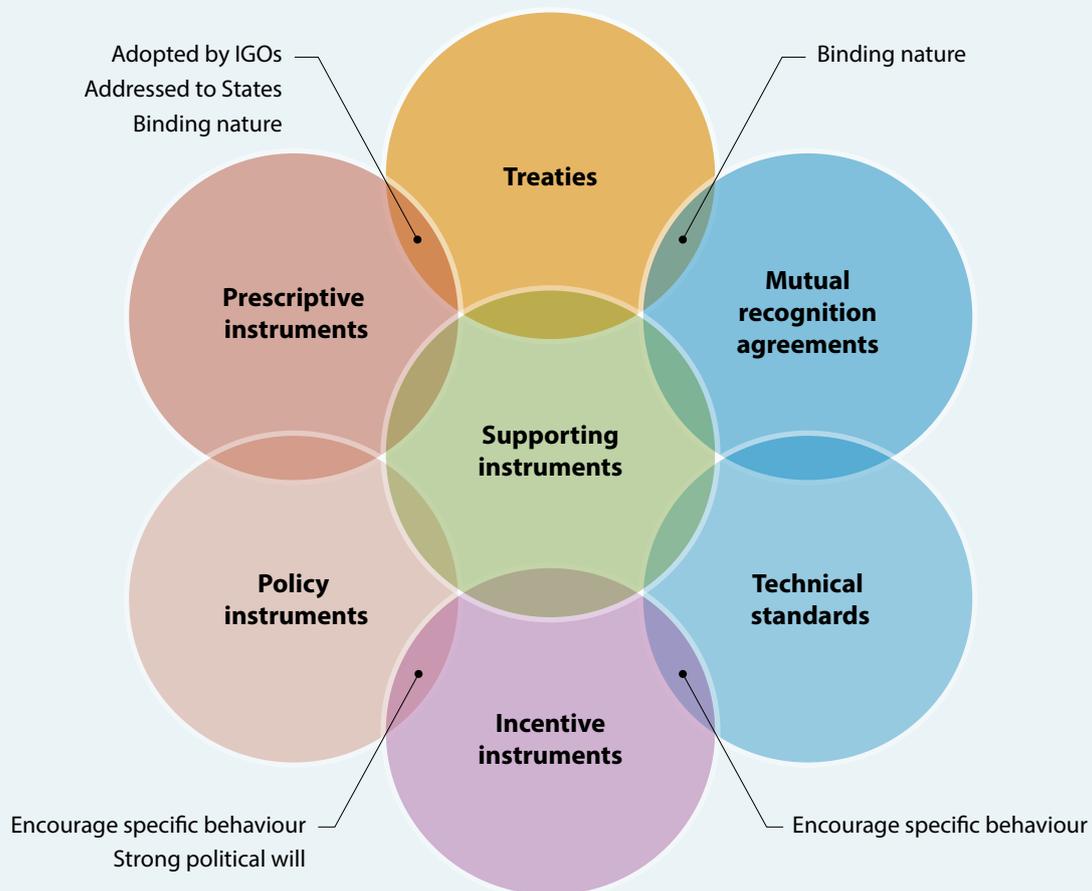
Figure 5. THE MULTIPLICITY OF IO INSTRUMENTS (Number of IOs reporting such instruments)

36 respondents



Source: 2018 IO Survey

Figure 6. FAMILIES OF INSTRUMENTS DEVELOPED BY INTERNATIONAL ORGANISATIONS



Treaties have a generally accepted definition in international law. It is a generic term used to describe “an international agreement concluded between States in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation” (Vienna Convention of Law of Treaties, 1969). This family of instruments also covers conventions (which are equivalent to treaties) and protocols (which complement or modify a treaty by establishing for example additional rights and obligations). Treaties are self-standing, legally binding instruments usually negotiated and concluded by States. Treaties can be concluded under the auspices of IGOs following a diplomatic conference, or outside the framework of international organisations.

Prescriptive instruments (e.g. decisions and possibly resolutions or directives) are legally binding instruments, which are not directly adopted by States (unlike treaties) but by IOs (generally IGOs), through the intermediary of governing bodies composed of IO Member States. These instruments are addressed to States, which must take the

necessary measures at a domestic level to enforce them in order to comply with their international obligations.

Policy / Political instruments (e.g. policies, policy statements, statements, declarations, communiqués, resolutions and possibly others classified under incentive instruments such as recommendations, guidance, model laws depending on IOs practice) express a strong political commitment from IO members on a current subject.

Incentive instruments (e.g. recommendations, guidelines, best practices, best practice guidance, codes of practice, model treaties or laws) are the most common instruments among IOs (OECD, 2016). They encourage their addressees to behave in a certain way, without being legally binding, and leave some flexibility to adapt to specific member conditions. They share many traits with policy/political instruments but enter into greater levels of details in prescribing certain behaviours. Within this category, recommendations stand out because of their more formal and political nature (they are generally adopted at a higher level and demonstrate greater legitimacy).

Technical standards are voluntary instruments developed “in response to a need in a particular area expressed by stakeholders through a bottom up approach” (OECD, 2016). They may then be incorporated by States within their domestic legislation (the WTO SPS and TBT Agreements require WTO members to base their domestic regulations on international standards) and/or directly implemented by private actors, which perceive their quality and relevance. While technical standards can be developed by different kinds of IOs, they have supported the emergence of a wealth of private standard-setting organisations operating in specific technical areas.

A number of IOs adopt and host **mutual recognition agreements** among their members to enable the mutual recognition of norms and standards (and proofs

of compliance) issued by national bodies abiding by the agreement. They are generally legally binding, but not necessarily at the international level.

Supporting instruments are used as tools facilitating the implementation of other normative instruments adopted by IOs. They are not legally binding as such but impose a formal framework on their addressees and help them to comply with what is expected of them in relation to specific instruments. This family may include programmatic or strategic documents related to specific normative instruments (such as agenda, work plans, action plans, implementation plans, blueprints, frameworks, roadmaps, strategies) and explanatory documents (explanatory notes, explanatory reports, guides for the application, toolkits, notices, vocabularies, glossaries, classifications).

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. Some instruments are “primary”, in that they provide the broad framework for operation (typically treaties). Other are “secondary” or “accessory to a primary instrument”

in that they either prepare the ground *ex ante* (for example by building the political momentum such as with declarations) or support implementation *ex post* (i.e. “supporting instruments”). The United Nations Economic Commission for Europe (UNECE) Convention of Long-Range Transboundary Air Pollution provides an example of such an ecosystem.

THE ECOSYSTEM OF THE UNECE’S CONVENTION ON LONG-RANGE TRANSBOUNDARY AIR POLLUTION (CLRTAP)

Adopted in 1979, the CLRTAP was preceded by political statements from two key international events that helped built political momentum for multilateral solutions to environmental problems: the 1972 Stockholm Declaration from the United Nations Conference on the Human Environment and the Final Act of the 1975 Conference on Security and Co-operation in

Europe held in Helsinki. Since its adoption, the Convention has gone through different stages including the adoption of 7 Protocols signed between 1985 and 1999 addressing key air pollutants. A number of Guidance documents adopted together with the Protocols provide paths to secure implementation and compliance of the CLRTAP.





Ensuring the quality of international rulemaking

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 IOs or more (OECD, 2013). The international organisations who participated in the 2015 Survey have produced a total of some 70,000 legal and policy instruments.

But, with increasing complexity may come a perception of duplication, over-bureaucracy, inaccessibility, lack of transparency and accountability, 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 OECD countries, only 42% of citizens reported trusting their national government in 2016 (OECD, 2017). There is some evidence that IOs are also subject to this disaffection.

Because of their nature, IOs are often seen as intrinsically connected to globalisation and therefore blamed for its shortcomings. A [2016 YouGov survey](#) covering 19 countries showed that although “globalisation is still seen as a force for good”, populations from fastest-growing economies tend to be more positive than those from less thriving economies, which tend to blame globalisation for wage stagnation and unemployment. In this context, a number of civil society organisations perceive IOs as a cause for more rather than less global inequalities (Stutzer and Frey, 2006). Certain academics criticise IO accountability (Dahl, 1999) or the

overreliance on international expertise at the expense of national interests (Koskenniemi, 2011; 2018).

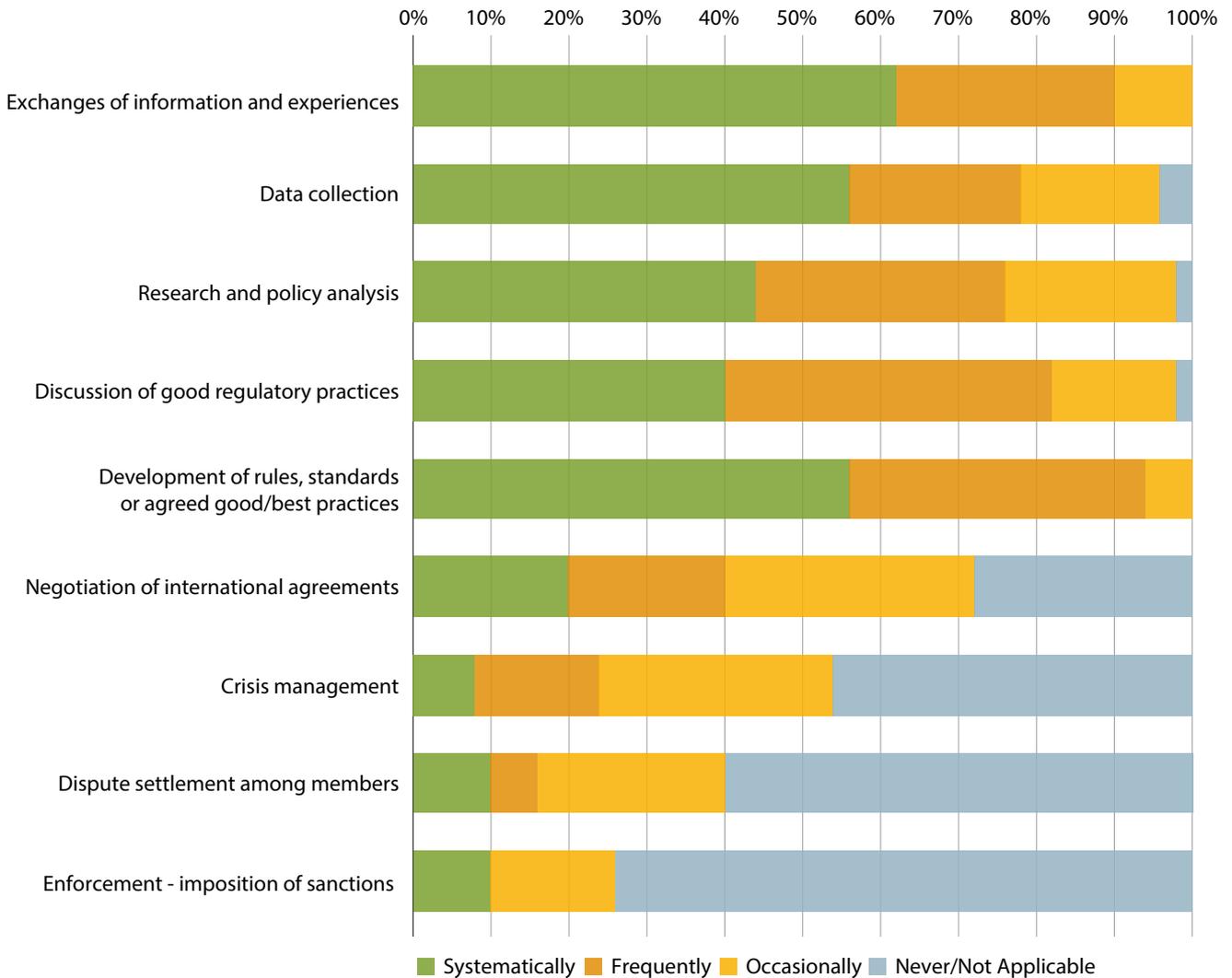
In this context there is a need to improve the transparency, relevance and consistency of international rulemaking and ensure that it works as intended: as an instrument for managing globalisation for the well-being of all. The work of the IO Partnership reveals the need to address weaknesses in the implementation of international rules; promote evidence-based and transparent rulemaking; and encourage greater co-ordination among international rule makers.

ADDRESSING THE CHALLENGE OF IMPLEMENTATION

IO instruments need to be adopted or used domestically to have a practical effect. The ways in which this is done depend on each country’s constitutional systems, and adoption is often done without any involvement of IOs. Nevertheless, IOs may track the use of their instruments, and provide related support and guidance to their Members to implement them.

Figure 7. IO CORE RULEMAKING ACTIVITIES

50 respondents



Source: OECD (2016), *International Regulatory Co-operation: the Role of International Organisations in Fostering Better Rules of Globalisation*, OECD Publishing, Paris.

Results from the 2015 Survey showed how active IOs are in the various phases leading to the development of rules, including exchange of information, data collection, research and policy analysis and discussion of good practices (Figure 7). By contrast, they are much less active in relation to the uptake of their instruments by relevant users (i.e. their implementation) once these have been adopted by the organisation and its members.

Answers to the 2018 Survey confirm that implementation of international instruments is, in the vast majority of cases, a responsibility of members, often shared with the Secretariat (for two thirds). The exceptions are a number of IOs, mostly private standard setters, for which the instruments are applied directly by end-users (businesses

or organisations). For some 20 IOs, implementation of a number of instruments may require, or be facilitated by, changes in legislation.

Beyond mandates and specific governance arrangements, ensuring the uptake of their instruments is an important challenge for IOs and one that drives the effectiveness of their normative activity. Evidence from the 2018 Survey shows that IOs and their constituencies are attentive to the implementation of their normative instruments and invest in the related supporting mechanisms. Three-quarters of surveyed IOs provide a description of their instruments' implementation - often as part of the instruments themselves, or in a broad official document (e.g. founding document, rules of procedure, etc.), or both.

The mechanisms developed by the IOs to facilitate the implementation of their instruments can be grouped into four categories (Figure 8):

1. assistance mechanisms, to provide support to members in the implementation of IO instruments;
2. compliance mechanisms, to verify the implementation of IO instruments and support conformity. Depending on the legal framework, certain remedial actions (formal or informal) may be undertaken in case of non-compliance;
3. advocacy mechanisms, to enhance the visibility of the international instrument, strengthen its relevance in broader contexts and foster ownership by members;
4. monitoring mechanisms, to track the use of IO instruments for assistance, compliance assessment, or advocacy purposes.

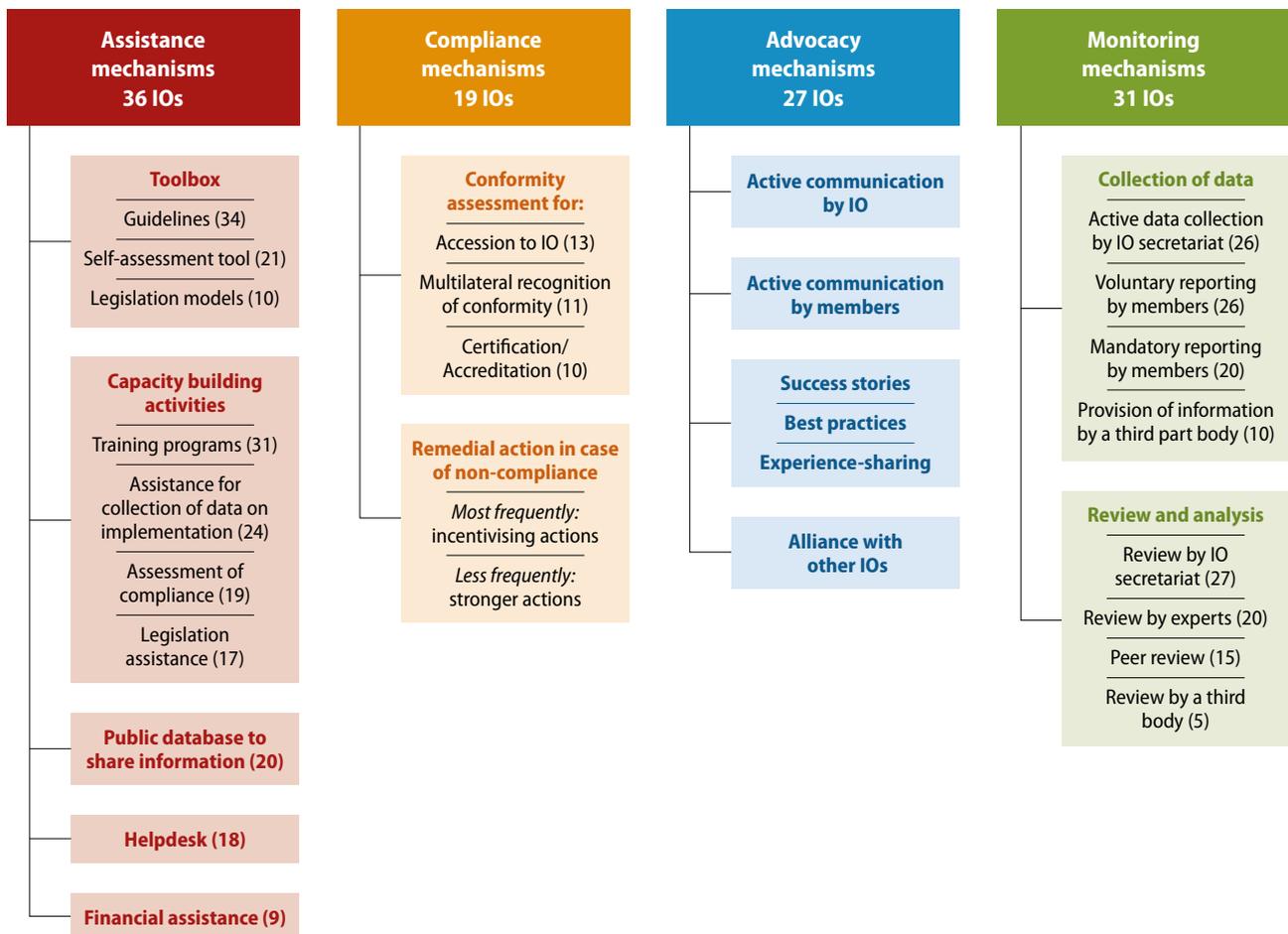
The 2018 Survey results show significant use by IOs of these various mechanisms to incentivise, if not impose, the use of their normative instruments. Assistance and monitoring mechanisms are most widely used. Forms of assistance are manifold, but they mostly encompass soft tools such as guidance and training programmes to incentivise appropriate uptake.

IOs collect a mix of information related to the use of their normative instruments, both quantitative and qualitative. This information may be provided by members through reporting mechanisms. Across IOs, the secretariat plays a very strong data collection role, either as a repository of information provided by members through voluntary or mandatory reporting, or through active data gathering.

Figure 8. **TYOLOGY AND EXAMPLES OF IMPLEMENTATION MECHANISMS**

(Number of IOs reporting such mechanisms)

36 respondents



Source: 2018 IO Survey

EXAMPLES OF DATA COLLECTION AND ANALYTICS IN SUPPORT OF IO RULEMAKING ACTIVITIES

The Research, Evidence and Analytics (REA) of the International Federation of Red Cross and Red Crescent (IFRC): The REA team was created to act as a focal point for all matters relating to the production and use of evidence for IFRC activities. REA carries out projects which seek to build evidence and research capacities with partners and independently.

The Country Profile Database of the World Meteorological Organization (WMO): The WMO provides an online platform, the Country Profile Database (CPDB), which in its optimal iteration will provide a single window capacity development tool for collecting data on Members’ national projects,

deficiencies and needs for their Meteorological, Hydrological and Climate services (<https://www.wmo.int/cpdb/>).

The national reports transmitted under the Basel and Stockholm conventions (BC and SC): National reports are to be transmitted on a regular basis by Parties to the BC and SC. The information provided enables the Conferences of the Parties of the two conventions and their subsidiary bodies (Implementation and Compliance Committee under BC and Effectiveness Evaluation Committee under SC) to monitor progress of, respectively, the individual and collective implementation and the effectiveness of the conventions.

ASSESSING THE IMPACTS OF IO INSTRUMENTS

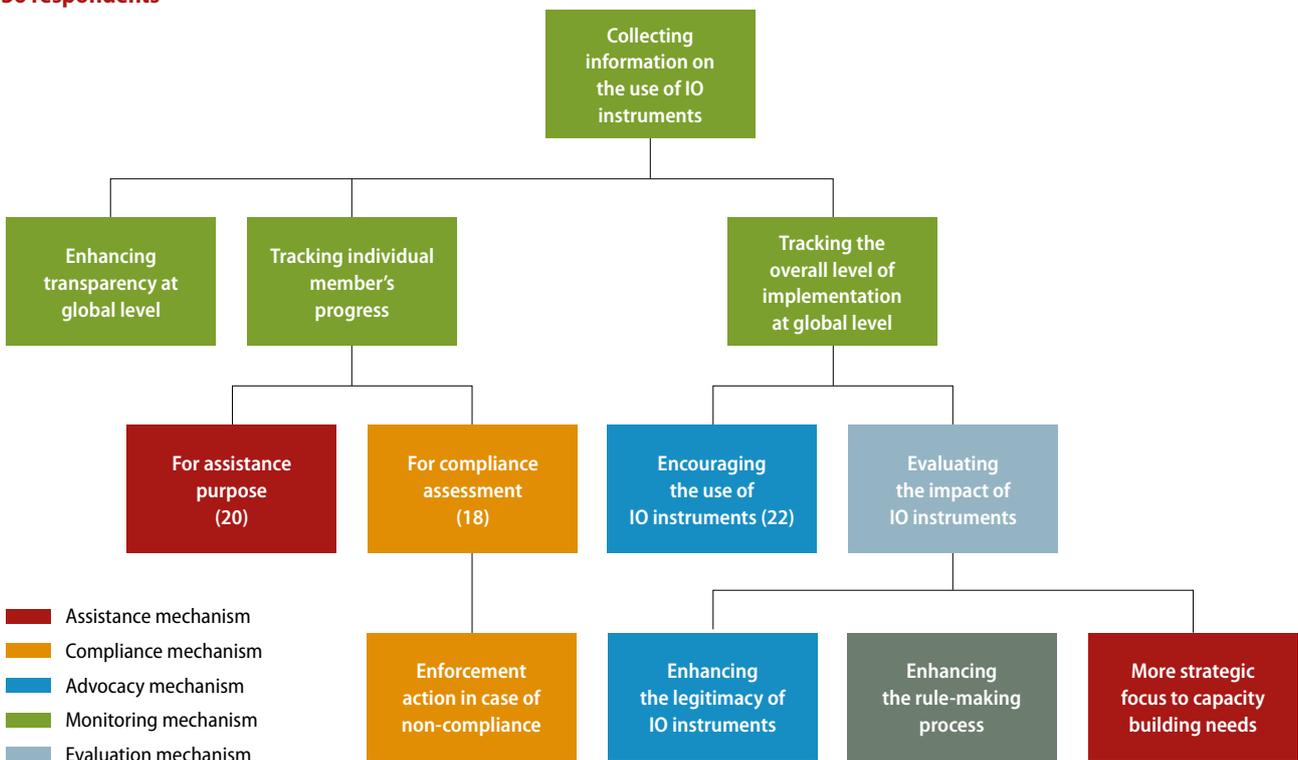
While IOs collect a wide range of information relevant to the implementation of their normative instruments, this information is mostly used to assess members’ assistance needs or promote the use of the instruments (Figure 9). Rarely, this information

serves to evaluate the performance of the instruments themselves and whether they achieve their objectives. However, this kind of performance evaluation could be a useful step to help improve these instruments over time.

Figure 9. FOR WHAT PURPOSE IS INFORMATION ON IMPLEMENTATION USED?

(Number of IOs reporting such mechanisms)

36 respondents



Source: 2018 IO Survey

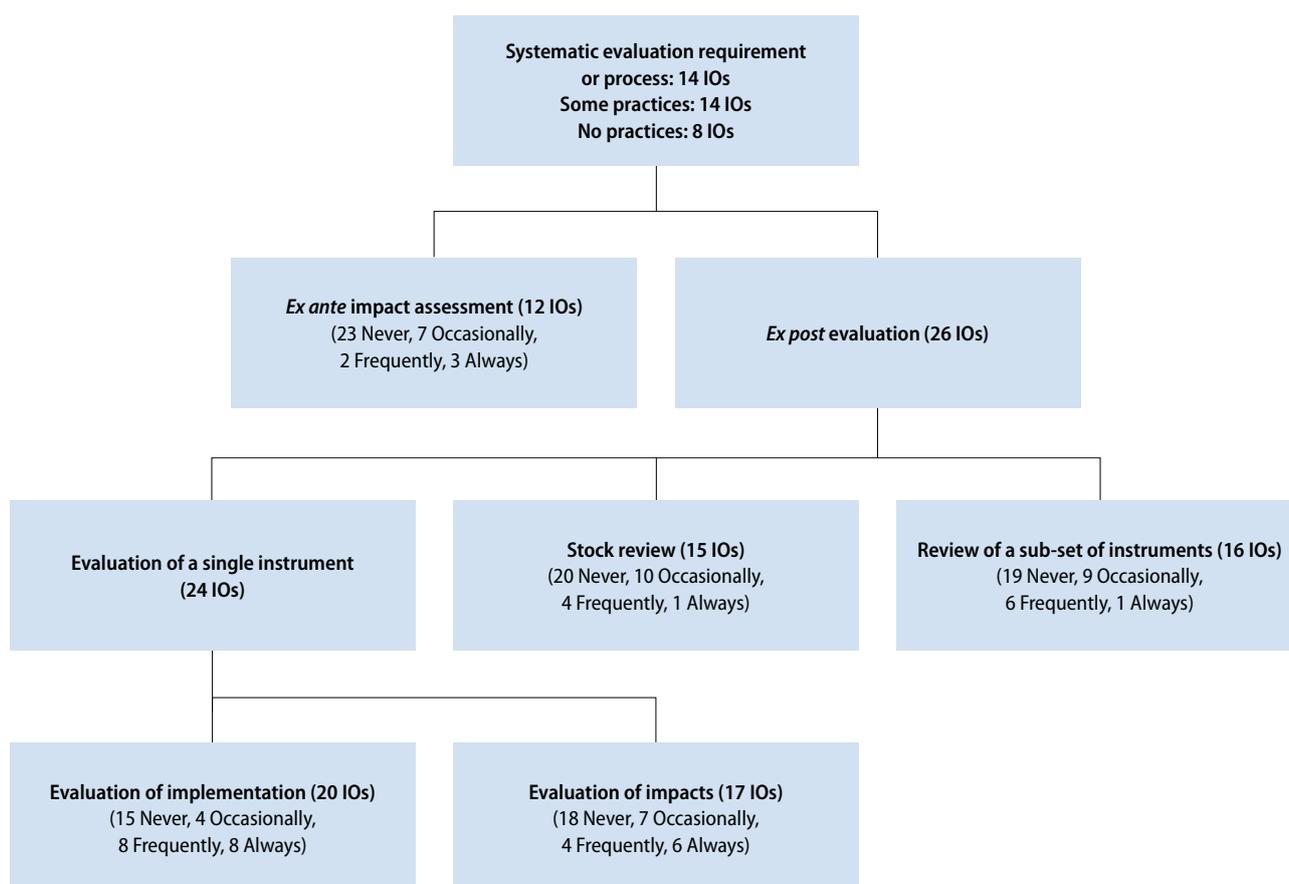
When evaluation of impacts is carried out, it is done *ex post*, rather than *ex ante*; for a single instrument rather than for the stock; and mostly for use rather than impacts (Figure 10). Evaluation is more systematically

carried out by IOs with strong instruments (ILO, UNFCCC) and private standard-setters (ASTM, IEC, ISO and IFAC). A number of interesting practices and guidance exist that can provide a basis for inspiration.

Figure 10. **TYPOLGY AND EXAMPLES OF NORMATIVE EVALUATION MECHANISMS**

(Number of IOs reporting such mechanisms)

36 respondents



Source: 2018 IO Survey

EXAMPLES OF IO REVIEW PROVISIONS

International Organization for Standardization (ISO)

Guidance on the Systematic Review process: To ensure that ISO standards remain up-to-date and globally relevant, they are reviewed at least every five years after publication through the Systematic Review process (Figure 10). Through this process, national standards bodies review the document and its use in their country (in consultation with their stakeholders) to decide whether it is still valid, should be updated, or withdrawn. Other IOs, such as OIML, follow a similar process. ISO provides a Guidance on the Systematic Review process: www.iso.org/files/live/sites/isoorg/files/store/en/Guidance_systematic_review.pdf

International Union for the Conservation of Nature (IUCN) resolution on Identifying and archiving obsolete Resolutions and Recommendations:

Recognising that IUCN's Resolutions and Recommendations constitute its fundamental body of policy, in 2016 its Members sought to make this more accessible and coherent by undertaking a thorough policy review, and to archive Resolutions and Recommendations that have been implemented or are obsolete:

https://portals.iucn.org/library/sites/library/files/resrecfiles/WCC_2016_RES_001_EN.pdf

ENSURING TRANSPARENCY AND INCLUSIVENESS

In a context of growing scepticism against globalisation, inclusive international rulemaking is increasingly perceived as crucial to encourage the implementation of rules and enhance trust in the multilateral rule-based system. Open and inclusive rulemaking has become widely accepted as a fundamental pillar of the quality of laws and regulations at the domestic level. Stakeholder engagement is also becoming a greater component of rulemaking at the international level (Figure 11).

All IOs engage stakeholders (although to a varying degree) to ensure the quality of their standards and rules (OECD 2016). They increasingly open up their rulemaking processes beyond their usual constituency, by enlarging their membership – a key trend highlighted before – and/or through more systematic consultation practices.

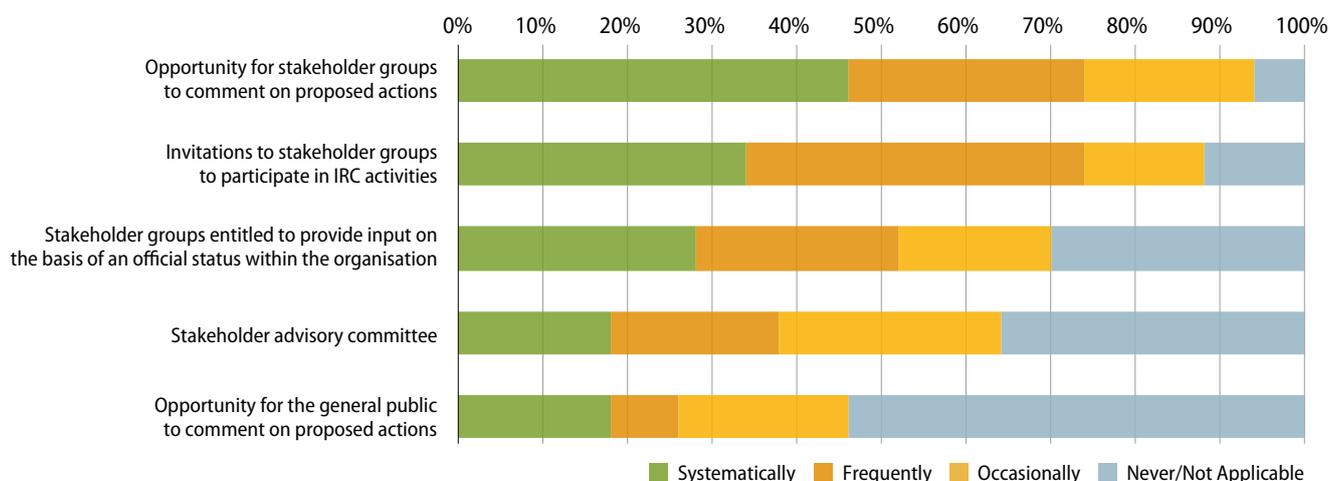
Results from the 2018 Survey show that the concept of “stakeholders” is broad and highly IO-specific. Twelve IOs report some sort of understanding but not really a definition of “stakeholders”. Nevertheless, building on this information, three main and non mutually exclusive approaches to stakeholders emerge that reflect their relation with the IO normative activities:

- Those not having decision-making power, i.e. observers
- Interested parties / members / IGOs or associations with specific interests in the work of the IO
- Entities attending in an advisory capacity

De facto, a wide range of actors are reported as being stakeholders, ranging from government representatives, private sector, and NGOs to name a few.

Figure 11. IO PROCEDURES TO OBTAIN INPUT FROM STAKEHOLDERS IN RULEMAKING ACTIVITIES

50 respondents



Source: OECD (2016), *International Regulatory Co-operation: the Role of International Organisations in Fostering Better Rules of Globalisation*, OECD Publishing, Paris.

ACTORS REGARDED AS STAKEHOLDERS BY IOS

(Number of IOs reporting such stakeholders)

36 respondents

| | | | |
|----------------------------------------------------|----|-------------------------------------|----|
| Government representatives of Member countries | 29 | Philanthropic foundations | 19 |
| Government representatives of non-Member countries | 27 | International business associations | 31 |
| National regulatory agencies | 29 | Private sector entities | 28 |
| Other entities/organs at the domestic level | 26 | Individual experts | 28 |
| Intergovernmental organisations (IGOs) | 35 | Labour or trade unions | 14 |
| International non-governmental organisations | 33 | Consumers | 19 |
| Academic institutions | 27 | Other | 13 |
| Academic unions | 16 | | |

Source: 2018 IO Survey.

Approaches to stakeholder engagement vary depending on the structure of the organisation. A number of IOs are “atypical” in that they provide in their membership the opportunity for a broad range of actors to interact with the work of the organisation. It is the case of ASTM International for example, whose membership comprises some 30 000 individuals representing producers, users, consumers, governments, universities and other stakeholders.

IGOs have a more homogeneous approach to stakeholders (as going beyond government representation). In this perspective, stakeholder engagement means engaging those that are not involved in the formal governance and decision-making processes of the IO. Although even this requires qualification as a number of IGOs seeks to complement decision-making processes considered insufficient to « fully » engage their members.

Despite its recognised importance, so far few IOs have developed a whole of organisation policy or strategy for stakeholder engagement, mapping their stakeholders and defining objectives and key steps to engage them and manage risks. They mostly rely on provisions in founding

or procedural documents highlighting its importance, rather than a framework of systematic practices and tools.

There are exceptions to this broad feature. A number of IOs, such as the WHO, have a more systematic approach to stakeholder engagement. Without going that far, many IOs have rationalised their engagement of other IOs and established principles applying to observers or specific groups (such as the private sector).

EXAMPLES OF IO POLICIES OR GUIDELINES OF ENGAGEMENT WITH SPECIFIC GROUPS

The Pharmaceutical Inspection Co-operation Scheme (PIC/S) has established Guidelines on Professional Organisations, which describe how to co-operate with these organisations, notably when organising joint training events (for regulators and industry).

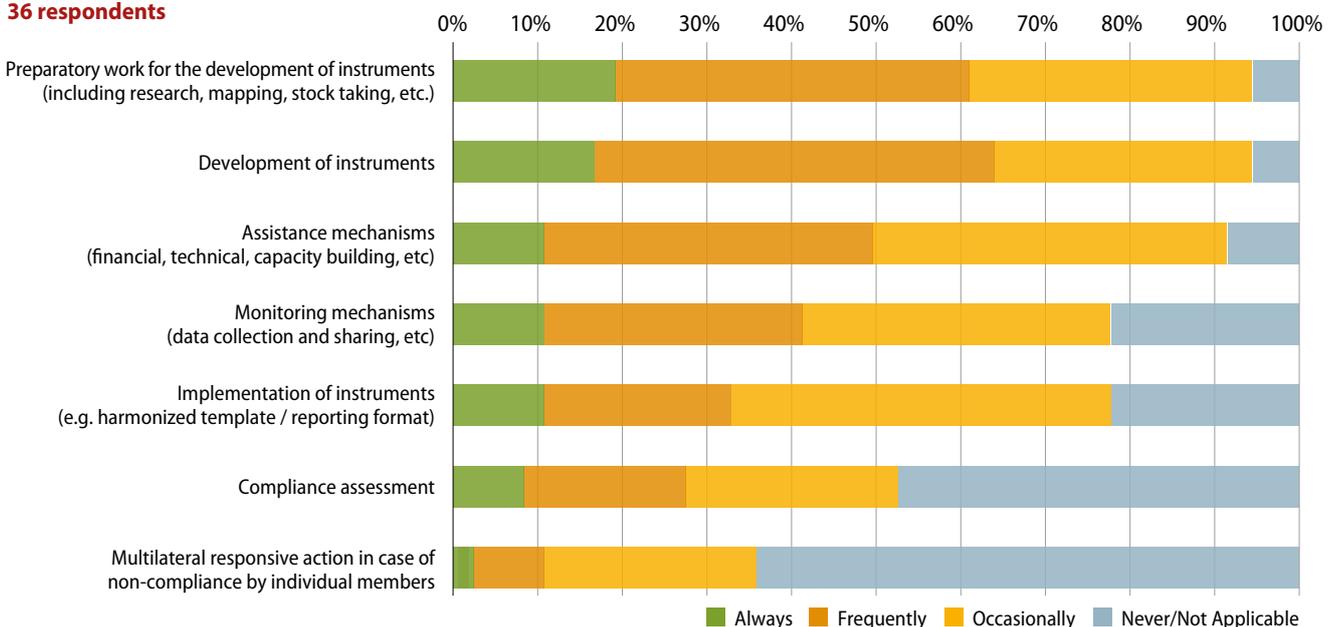
The United Nations Industrial Development Organization (UNIDO) has a Policy on Business Sector Partnerships that sets out how UNIDO enters into a partnership with business/ private sector.

CO-ORDINATING THE CO-ORDINATORS

To address new challenges, new business models and new technologies that transcend borders, IOs need to co-ordinate their responses to capitalise on their combined strengths

and avoid inconsistency. In the face of strongly intersected domains, co-ordination is more than ever critical to support international rulemaking that operates as a system.

Figure 12. AREAS OF IO CO-ORDINATION
36 respondents



Source: 2018 IO Survey

De facto, some co-operation is taking place – mostly in the *ex ante* preparatory work and development of instruments (Figure 12). There are also some combined efforts in providing assistance to foster the use of normative instruments and for monitoring them. However, there is still untapped co-operation potential in the areas of compliance assessment and support for collective action in case of non-compliance. This is very much in line with the core activities of most IOs, which focus on gathering evidence and developing international instruments rather than implementing them. These are also areas where the role of IO secretariats is prominent.

EXAMPLES OF STRONGER FORMS OF CO-OPERATIONS ACROSS IOS

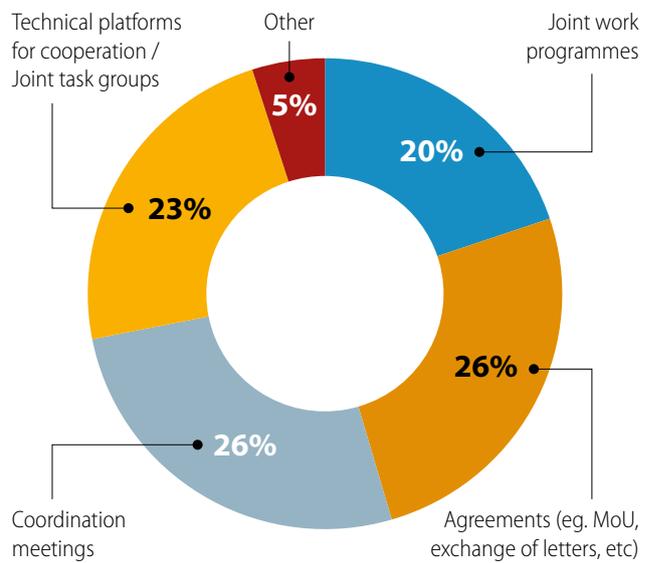
The **CODEX Alimentarius** is a joint FAO/WHO Programme setting international food standards, guidelines and codes of practice for the safety, quality and fairness of international food trade. A set of guidelines for co-operation between the Codex Alimentarius Commission and intergovernmental organisations in the elaboration of standards and related texts govern the participation of IOs in the work of the Commission.

A host of international organisations working on or related to metrology are members of the **Joint Committee for Guides in Metrology (JCGM)** a body tasked with developing, maintaining and promoting global adoption and implementation of specific metrology instruments including the the Guide to the Expression of Uncertainty in Measurement (GUM) and the International Vocabulary of Metrology (VIM). To date, BIPM, IEC, IFCC, ISO, ILAC, IUPAC, IUPAP and OIML are members of the Committee.

The gaps in co-ordination relate to the lack of systematic mapping of potential partners (only 7 IOs report doing it) and the limited shared understanding of how to co-ordinate (only 15 IOs report written guidelines or formal instruments addressing co-ordination with other IOs). IOs engage in a multiplicity of informal or less stringent co-operation arrangements for which effectiveness and impacts are difficult to assess. Most of the time, co-ordination related to international instruments happens through Memoranda of Understanding and co-ordination meetings. Less often, it is done through joint work programmes (Figure 13).

Figure 13. TOOLS OF IO CO-ORDINATION

34 respondents



Source: 2018 IO Survey





What next? What can IOs do individually and collectively?

The skepticism against globalisation has created an urgent need to restore citizens' trust in the fairness of governments and institutions. Transparent and inclusive rules and institutions, as well as effective implementation, are more than ever essential both at the international and at the domestic levels, to rebuild confidence in public action and in the multilateral system.

In this context, the partnership of international organisations for effective international rulemaking provides a platform where some 50 secretariats of IOs can engage in exchange of information and peer learning. This IO Partnership strives to make international rules more relevant (with better co-ordination across IOs to maximise comparative advantages), effective (through better monitoring and evaluation of IO instruments) and inclusive (through better transparency and consultation of stakeholders).

This partnership relies on initiatives taken at IO level to improve their normative activity by leveraging these individual initiatives and feed into a collective effort. Ultimately, the international rule-based system is deeply rooted in and dependant on the interface with national rulemaking. The bridges between the two need

strengthening and the relationship between the IOs and their constituents needs reinvigorating.

RECONNECTING THE INTERNATIONAL AND NATIONAL LEVELS

The quality of international instruments is ultimately a shared responsibility between the international and the national levels. IO rules are given effect through national implementation and use and impacts materialise to a large extent locally; engagement can benefit from grass-root knowledge; co-ordination among IOs is often a function of alignment across policy communities at national level.

Evidence collected at country level as part of the 2018 OECD Regulatory Policy Outlook complements the 2018 IO Survey to point to opportunities to bridge the

OECD MONITORING OF COUNTRY PRACTICES TO ACCOUNT FOR INTERNATIONAL CONSIDERATIONS IN NATIONAL RULEMAKING

The OECD Regulatory Policy Outlook 2018 maps every 3 years the country practices in the development, delivery and revision of laws and regulations based on the 2012 Recommendation on Regulatory Policy and Governance. In 2018, it has documented and analysed, *inter alia*, countries' practices in accounting for the international environment

in domestic rulemaking. It has notably reviewed how international considerations are reflected in traditional regulatory management tools (such as impact assessments), existing requirements for the adoption of international instruments in national legislation and the interface between domestic and international rulemaking.

gap between domestic and international levels in the development, evaluation and revision of rules. Greater transfer of expertise and of evidence between the national and the international levels would support a better understanding of the impacts of international instruments and build a better evidence base across countries and IOs to inform the future development of normative instruments.

In particular, if impact assessments were conducted more systematically at the international level, they could inform the adoption of international instruments in domestic jurisdictions and provide useful evidence

that domestic regulators could use in their own assessments. Reciprocally, evaluations of normative instruments carried out by IOs could rely on evidence gathered by domestic jurisdictions, including as part of past *ex ante* and *ex post* evaluations of laws and regulations carried out in the same field. However, less than a third of OECD countries report reviewing the implementation of international instruments to which they adhere. Of those, only six report sharing the results of these evaluations with the relevant IOs – including in some instances by simply making these results available on a website (OECD, 2018).



HOW CAN THE IO PARTNERSHIP HELP GOING FORWARD? FROM DATA COLLECTION TO IO APPLICATION

The partnership aims to foster collective action among secretariat of IOs and IO constituencies to promote greater quality, effectiveness and impact of international rules. It focuses specifically, but not exclusively, on 5 areas:

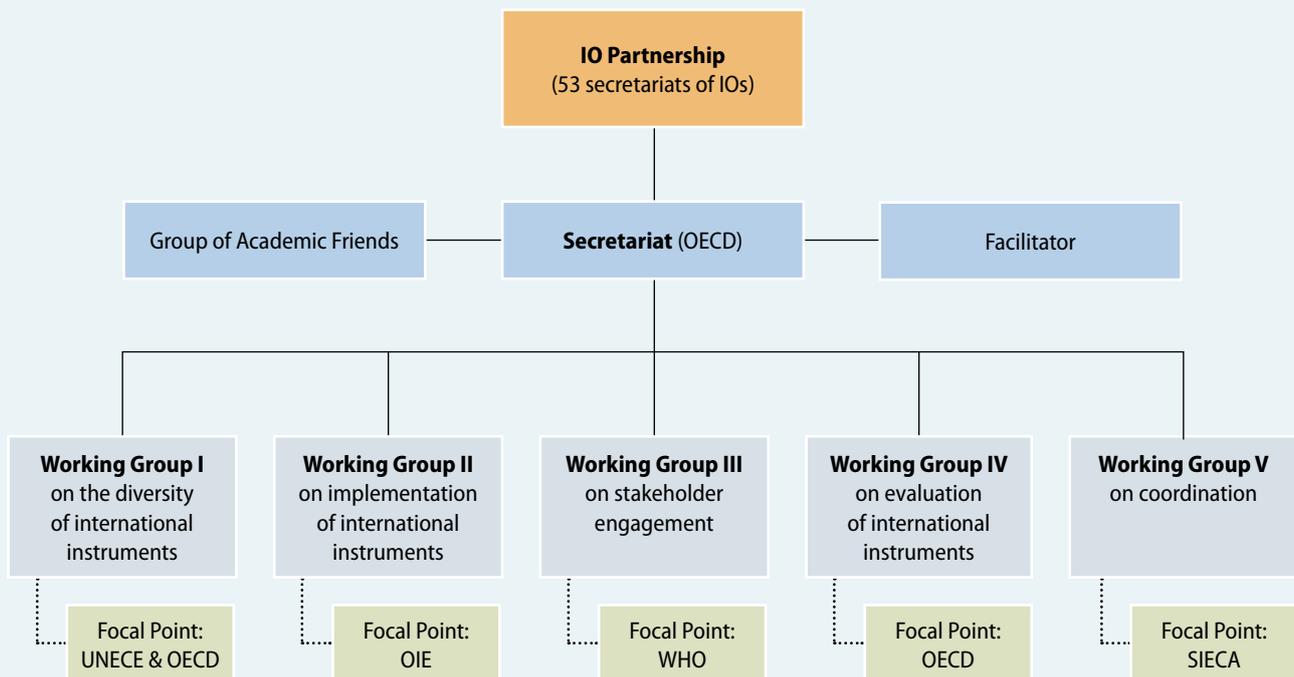
1. Understanding the variety in international instruments and their respective benefits/challenges;
2. Strengthening the implementation of IO instruments;
3. Ensuring efficient stakeholder engagement;
4. Developing a greater culture of evaluation of IO instruments; and
5. Maximising the opportunities for co-ordination across IOs.

THE IO PARTNERSHIP IN A NUTSHELL

In the spring of 2017, 45 secretariats of IOs agreed on collective action to promote greater quality, effectiveness and impact of international rules. The IO Partnership is a flexible and cross-sectoral initiative that brings together a wide variety of organisations involved in international rulemaking

in different fields of expertise. It currently comprises 53 secretariats of IOs: 45 participants and 8 observers. The initiative also invites contributions from a broad range of stakeholders, including governments, private sector, and academia.

Figure 14. ORGANISATION OF THE IO PARTNERSHIP



Key features:

- Annual meetings to foster dialogue on shared challenges and support common understanding on practices in international rulemaking.
- A collaborative workspace through an e-platform facilitates exchange of practices and experience.
- Five working groups led by focal points addressing in-depth issues.
- Analytical work following the OECD's long standing method of peer exchange and evidence-based analysis.
- A group of Academic Friends of the IO Partnership to harness expertise and research of relevant academics.

A number of IOs are already leading initiatives to improve the quality of their rulemaking. These efforts can be the basis for peer learning and support greater understanding among IOs and with their constituents of the value and importance of the quality of international rules. They can also support and promote practices, such as stakeholder engagement and evaluation, that are likely to foster better international rules.

Joint work as part of the IO Partnership is expected to leverage individual IO practices. In the coming years, it should deliver greater common understanding of terms and language, compendia of practices, and analytical

work in the five focus areas through exchange of information among IOs, with country delegates in charge of regulatory quality and with the Academic Friends of the IO Partnership.

Ultimately, existing experience and innovative practices will be gathered in a compendium to facilitate access to information on tools and practices to improve the quality, effectiveness and inclusiveness of international instruments. In turn, IOs could use the conceptual framework and compendium of practices on a voluntary basis to review their own activities.

SELECTED ON-GOING REFORMS IN THE INTERNATIONAL RULEMAKING LANDSCAPE

WHO “Framework of Engagement with non-State Actors”:

As part of its internal reforms to ensure its continued relevance, the WHO has improved and clarified the way it engages with external stakeholders. Since May 2016, WHO’s engagements with non-state actors are governed by the “Framework of Engagement with non-State Actors”, including its four Policies and Operational procedures related to, respectively, NGOs, private sector entities, philanthropic foundations and academic institutions. The Framework identifies various categories of interaction in which WHO engages with non-State actors: participation in, *inter alia*, consultations, hearings, and other meetings of the Organization; provision of financial or in-kind contributions; provision of evidence; advocacy activities; and technical collaboration, including through product development, capacity-building, operational collaboration in emergencies and contribution to the implementation of WHO’s policies. It establishes mechanisms to manage conflicts of interest and other risks of engagement.

The International Labour Organization (ILO) centenary Standards Initiative aims to ensure that the body of standards built up over a century remains robust and responsive to the constantly changing patterns of the world

of work, for the purpose of the protection of workers and taking into account the needs of sustainable enterprises. To this end, the ILO established a Standards Review Mechanism, which became operational in 2015. A Working Group in which governments, employers and workers are represented on equal footing reviews standards with a view to making recommendations to the Governing Body on: (i) the status of the standards examined, including up-to-date standards, standards “requiring further action to ensure continued and future relevance”, and outdated standards; (ii) the identification of gaps in coverage, including those requiring new standards; (iii) practical and time-bound follow-up action, as appropriate.

The World Organisation for Animal Health (OIE) is designing an Observatory to monitor the implementation of OIE international standards. Data collected and analysed will assist the OIE to gain a greater understanding of challenges to the implementation of standards and to evaluate the relevance and efficiency of OIE international standards. The outcomes of the Observatory will assist in improving the OIE standard setting process, proposing solutions to help Member Countries to overcome implementation challenges and evaluating the impact of OIE international standards.

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"We must return people's well-being to the centre of our focus, and ensure that the benefits derived from further interconnectedness of our economies, societies, institutions and cultures are more equally shared. To do so, our politics and policies must catch up with our increasing integration. We need better rules of the game and governance mechanisms that improve our coordinated action beyond borders."

Angel Gurría, OECD Secretary-General



For more information:

 www.oecd.org/gov/regulatory-policy/a-partnership-for-effective-international-rule-making.htm

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