

Regulatory policy, international regulatory co-operation and the role of international standards

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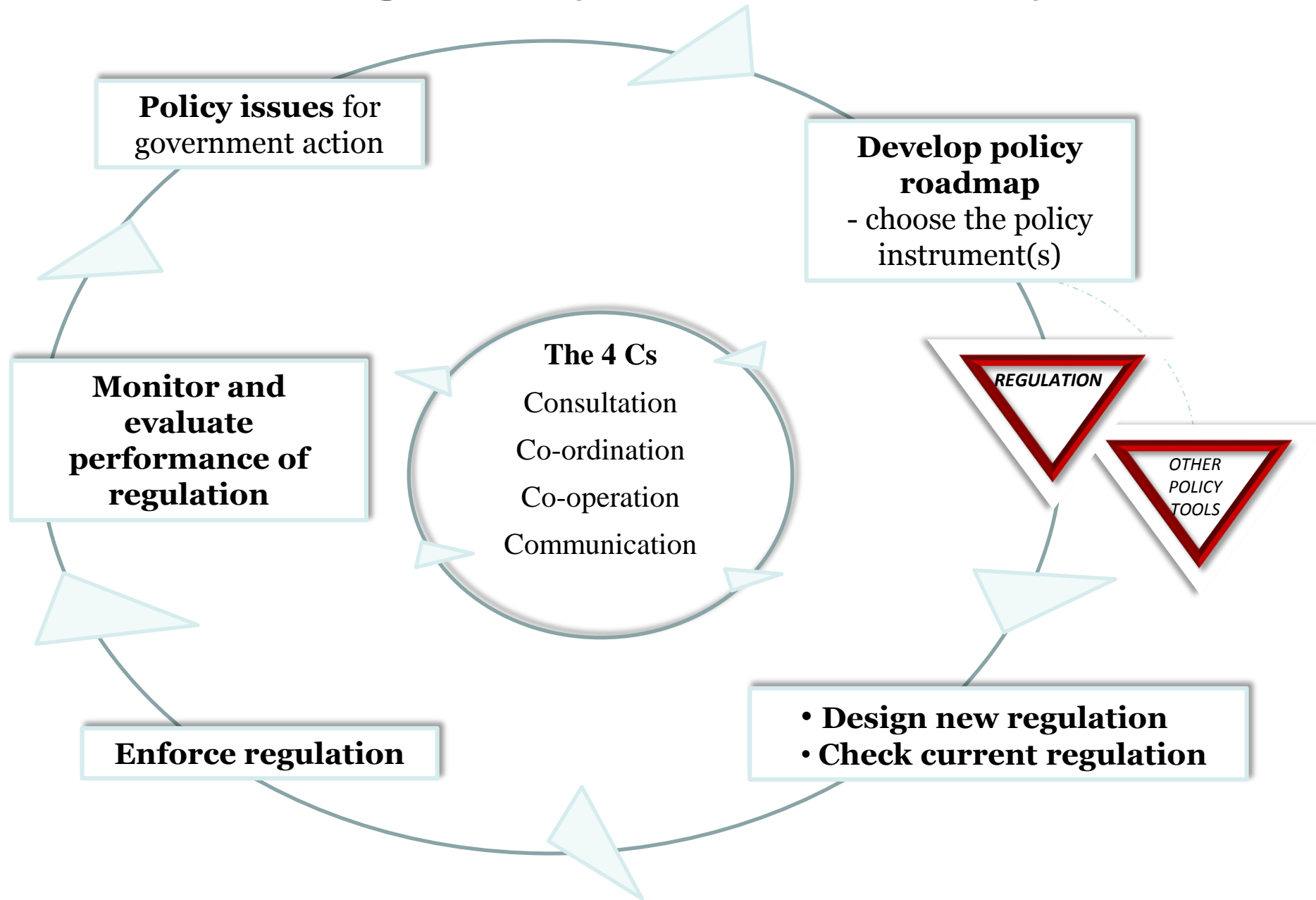
6th IEA International CCS Regulatory Network Meeting, 27-28 May 2014

OECD Regulatory Policy Committee

- The **Regulatory Policy Committee (RPC)** was created by the OECD Council on 22 October 2009 to assist member and non-member economies in building and strengthening regulatory policy and governance. It is a platform to help countries adapt regulatory policies, tools and institutions, learning from each other's experience.
- A **Network of Economic Regulators**, a subsidiary body of the RPC was established to promote cross-sectoral dialogue across regulators and discuss issues of governance and performance (example: Best Practice Principles for the Governance of Regulators)
- More information about OECD work on regulatory policy, including information about how governments can design, apply and enforce better rules can be found at www.oecd.org/regreform.



The Regulatory Governance Cycle



International Regulatory Cooperation

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

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**

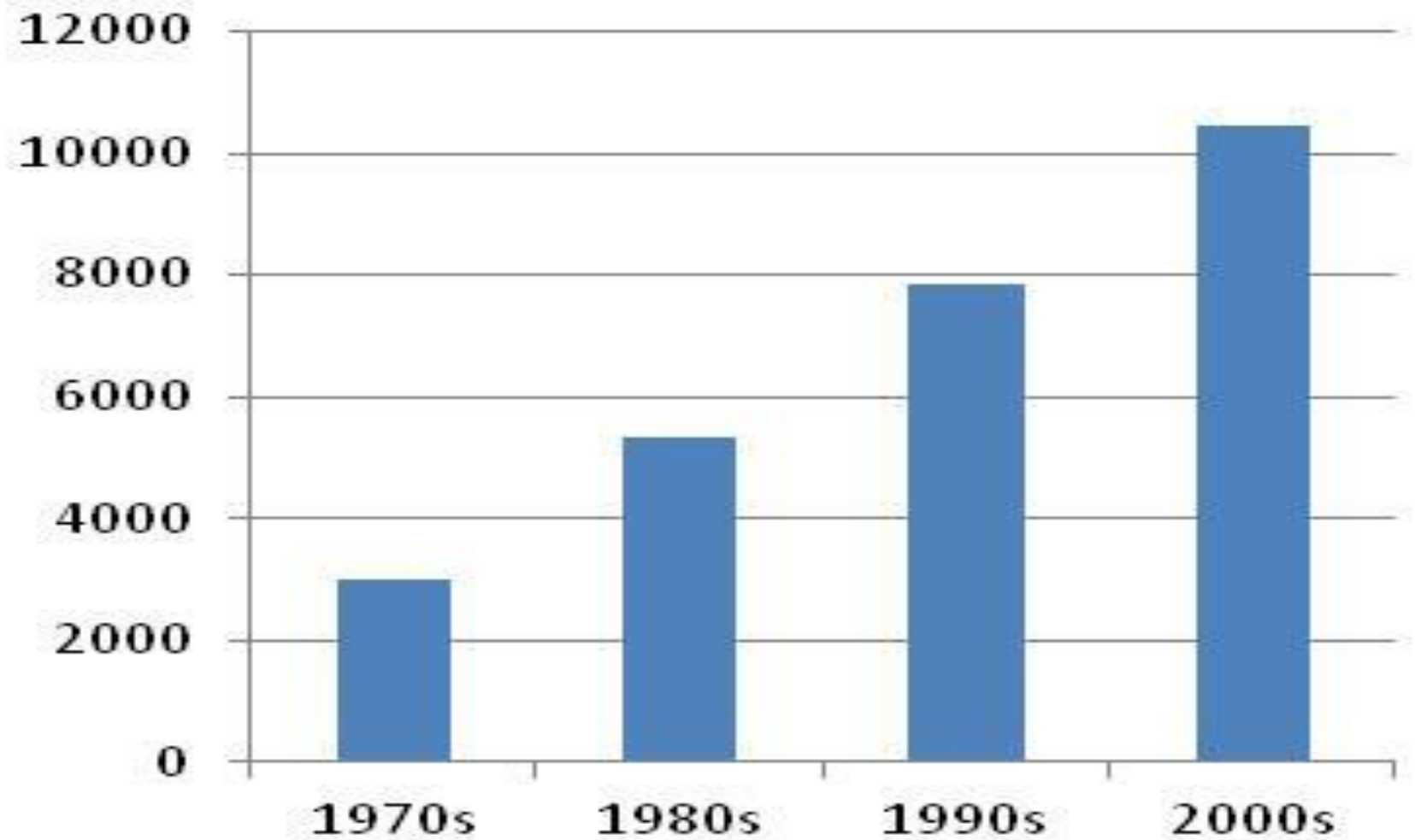
Key trends and highlights in IRC

- Growing IRC is supported by widening range of IRC mechanisms => a certain fragmentation
- 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

Trans-national private regulation

- Trans-national private regulation developed as a sector specific regulation in: environment, private security services, financial markets, technical standards, e-commerce,...
- Many schemes of various scope, size & governance structure (fully private, public-private, business, NGO,...)
- Regulatory outputs: codes of conduct, guidelines, industry standards,...
- Growing delegation of regulatory authority to international private standard-setting bodies: ISO, ITU, IEC, W3C, Codex Alimentarius Commission. Regional standard setters: CEN, COPANT, ARSO
- Recent consolidation of various TPR schemes & standards. Ex: ISO 2600 Standard on Social Responsibility

Number of ISO standards published



Benefits and challenges

International standardisation can lead to standards and references that are globally accepted by all stakeholders.

Enforcement based on contracts and market/reputation pressure is effective in global value chains that extend to countries in which the rule of law is not entirely complied with.

Allow heavy reliance on private expertise, which is relevant in markets where the pace of technological change is fast and highly technical information is needed for the definition of implementing measures and technical specifications; and private actors are the most informed parties.

Proliferation and fragmentation of private schemes (despite the consolidation under way).

The standardisation process tends to enshrine existing technical practice.

Uncertainty on the performance of TPR and on the conditions under which private schemes can constitute a suitable solution to achieve public goals.

Lack of accountability mechanisms and under use by TPR of better regulation instruments.

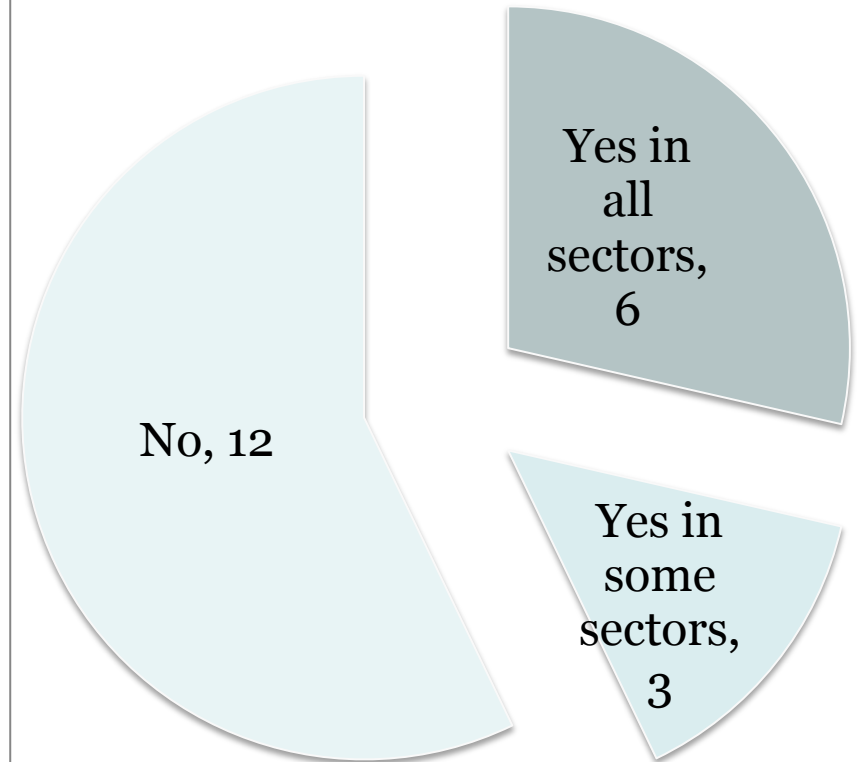
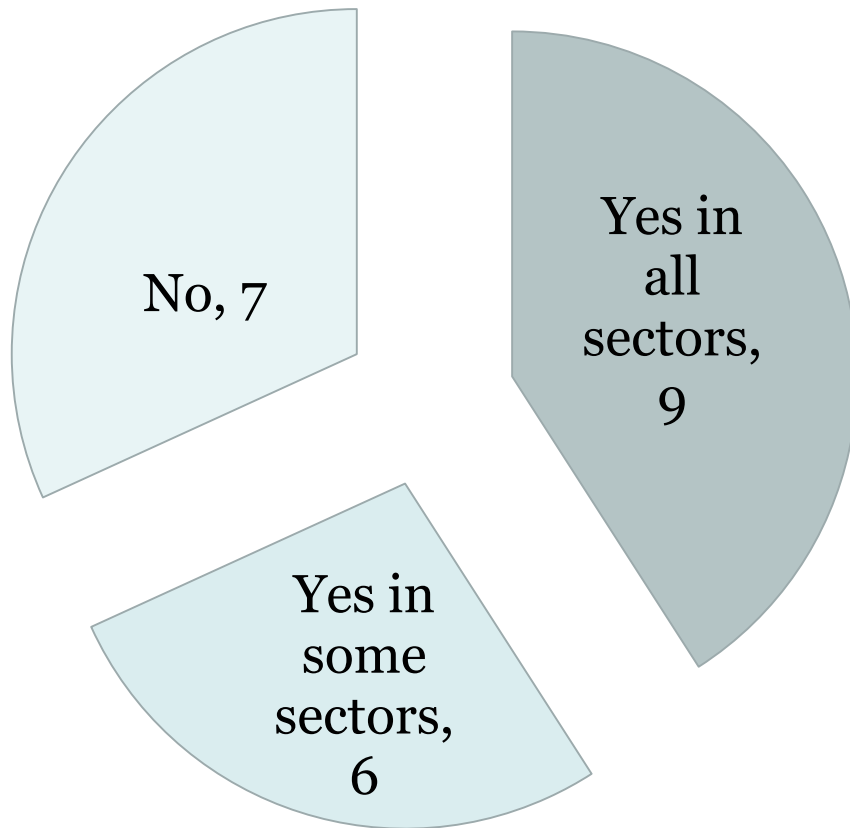
In some instances, TPR schemes may fail to achieve comprehensiveness and become clubs of specific interest .

Growing & challenging area from reg perspective

- Importance of standard-setting bodies has been formalised in the 1994 Agreement on Technical Barriers to Trade => WTO members should use relevant international standards as the basis for their technical regulations when they exist
- Many OECD countries have a requirement to consider international standards when developing new regulations.
- However, OECD (2010) reveals a lack of transparency and information on which standards are used and for which regulatory objectives leading to a failure to produce hard evidence on the impact of international standards on trade
- It is not clear that international standards are developed following key principles of good regulatory policy => some TPR may lack legitimacy and may be driven by specific rather than public interest.

Incorporation of International standards

Requirement to consider international standards (a)
and to explain the rational for diverting from them (b)



Disciplines and tools of regulatory quality

- Cost/benefit analysis or ex ante regulatory impact analysis
- Consultation
- Monitoring implementation
- Ex post evaluation

=> To ensure that instruments are fit for purpose and remain relevant over time

=> To ensure legitimacy, public interest and enforcement



THANK YOU

Contact us at: celine.kauffmann@oecd.org

Visit our website: www.oecd.org/gov/regulatory-policy