

Executive Summary



The last 40 years have seen rapid growth in international cooperation as governments increasingly work together.

Countries in East Asia have a history of actively engaging in international regulatory cooperation (IRC) of various types. This growing interdependence reflects a range of factors, including (i) mutual economic benefit through liberalised trade and investment, (ii) the strengthened ability of states to deliver regulation effectively, and (iii) geopolitical and strategic imperatives. However, existing studies focus on cooperation amongst developed economies, and little is known about IRC in East Asia as a whole.

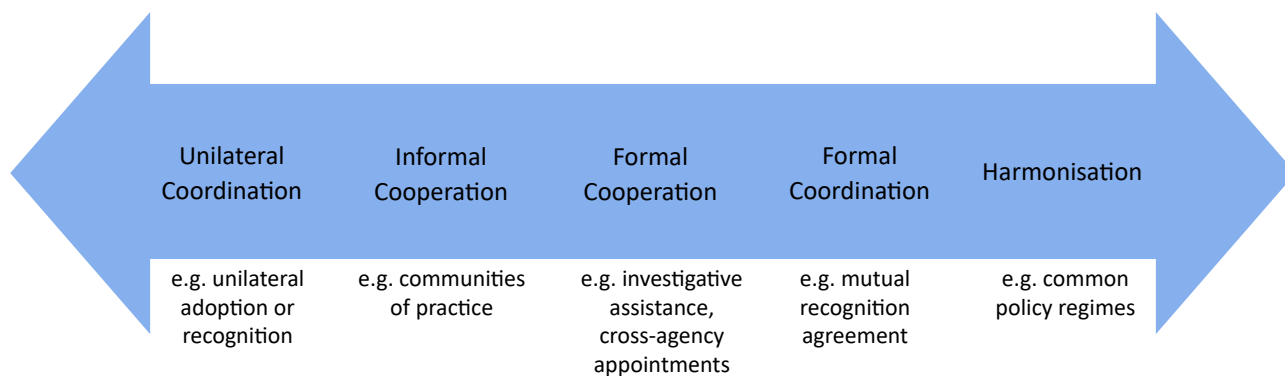
This research filled a gap by exploring the extent and willingness of governments to undertake international regulatory cooperation in East Asia.

This publication provides key findings from case studies, interviews, and an elite survey of key decision makers and opinion leaders in Association of Southeast Asian Nations (ASEAN) Member States (AMS), as well as New Zealand. The consistency of responses across these countries supports the reliability of the findings. However, two qualifications need to be highlighted. As a high-level analysis, the survey was not designed to capture what the average citizen thinks about IRC. Secondly, the research, conducted in 2018, pre-dates the outbreak of the coronavirus pandemic. As the analysis and interpretation of the findings were completed in early 2020, it was not possible to include an analysis of the pandemic's impact on IRC.

International regulatory cooperation takes a diverse range of forms.

The New Zealand Ministry of Business, Innovation and Employment defines IRC as 'the different ways that regulators from different countries work together to discuss, develop, manage or enforce regulations'. IRC is like art: people know it when they see it, but it is hard to define its boundaries. IRC falls on a spectrum from autonomous regulation at one end to full regulatory integration at the other, as shown in Figure 1. In between are a range of intermediate points such as informal cooperation through communities of practice, explicit cooperation on policies and procedures, and formal coordination such as the ASEAN Mutual Recognition Agreement for Professional Services.

Figure 1. The International Regulatory Cooperation Continuum



Source: Gill, D. (2018), 'International Regulatory Cooperation Case Studies and Lessons Learnt'. New Zealand Institute of Economic Research Report to the Ministry of Foreign Affairs and Trade, and Ministry of Business, Innovation and Employment. Wellington: New Zealand Institute of Economic Research.

IRC can take a bewildering variety of forms depending on the following elements:


- (i) 'Why' – the imperative for IRC;
- (ii) 'Who' – the number of actors (arrangements can be bilateral, subregional/regional, plurilateral, or multilateral);
- (iii) 'What' – the areas on which the cooperation focuses: regulatory policies (making rules), regulatory practices (interpreting, applying, and enforcing rules), or regulatory organisational management (supporting the administration of rules);
- (iv) 'How' – how intensive the cooperation is: informal networks of national regulators, mutual recognition agreements, and formal regulatory partnerships, amongst others; and
- (v) 'Which' – the structure of the legal form or other adopted mechanism.

(i) Why undertake international regulatory cooperation?

The drivers for undertaking IRC vary widely. Motives can include economic benefits, regulatory effectiveness, and geopolitical imperatives. For AMS, the ASEAN Economic Community (AEC) Blueprint 2025 creates an imperative for good regulatory practice (GRP), which covers improving IRC. IRC complements GRP in the AEC Blueprint 2025 and supports the drive to achieve regulatory coherence within ASEAN.

(ii) Who is involved in international regulatory cooperation?

IRC is highly pervasive, with all AMS along with New Zealand deeply embedded in a complex web of IRC arrangements. For AMS, regional arrangements were the most common, followed by multilateral agreements. New Zealand has a long history of multilateral involvements as well as a close relationship with Australia. For New Zealand,



IRC is predominantly multilateral arrangements (through the United Nations system, for example) or bilateral arrangements (mainly with Australia).

(iii) What does international regulatory cooperation focus on?

IRC is narrowly focused on specific areas of common interest – the ‘sweet spot’ of mutual gain. A win-win situation can involve aspects of regulatory policy or regulatory practices such as enforcement. For example, the close cooperation between Australia and New Zealand on trans-Tasman competition law focuses on investigations and remedies for mergers and cartels. There is limited cooperation on other areas such as restrictive trade practices between the two competition authorities, despite similar policy settings. The development of IRC is highly path-dependent with quite different arrangements in apparently similar sectors.

(iv) How intensively do countries work together?

Countries often work together through networks, as informal regulator-to-regulator communities of practice are preferred over formal supranational or government-to-government agreements. In these transgovernmental networks, regulators engage directly with their foreign counterparts without involving their respective ministries of foreign affairs. Over time, these arrangements might become more formal as trust and engagement increase within the network.

(v) Which type of international regulatory cooperation is used?

Form follows function. As IRC is diverse, flexible, and pragmatic, IRC practitioners take a ‘horses for courses’ approach to choice of structure, as different approaches are required in different situations. The type of IRC adopted depends on the sector in question, the partners involved, and the perception of what works best. The survey showed there was high willingness to consider all potential types of IRC, especially dialogues, transgovernmental networks, adoption of international standards, and mutual recognition agreements. Support was still present, but lower for the unilateral adoption of policy or harmonisation through a supranational body. The research also focused on the factors that facilitate IRC, the barriers that impair it, how IRC is governed, and the direction of IRC in the future.

What are the enablers of international regulatory cooperation?

IRC programmes have several common success factors. In particular, the crafting of successful IRC involves (i) all participants seeing the IRC programme as a win-win; (ii) the programme design being clearly focused on what to cooperate on for mutual gain, by starting small and growing forward; (iii) aligning the intensity of IRC with what is required, and choosing the least demanding type of IRC required to get the tasks completed; (iv) keeping tabs on the key drivers (hard factors such as membership, leadership, and secretariat are important, but the soft factors of relationships, trust, and sustained commitment are critical); and (v) facilitating enablers (including legal mandates, the addressing of power imbalances, resourcing, capability, and stakeholder management). Thus, a complex array of factors influences the success of IRC initiatives.

What are the barriers to international regulatory cooperation?

The main potential barriers are (i) differences in capability as trust in other countries' systems is uneven, (ii) legal obstacles to IRC (e.g. restrictions on information sharing and confidentiality rules), (iii) the increased administrative burden of IRC, and (iv) concerns about the lack of regulatory flexibility and loss of sovereignty arising from IRC. Paradoxically, while there were concerns about the loss of regulatory sovereignty, there was strong support for the view that IRC strengthens states' capacity to deliver effective regulation. This is consistent with the view that, although the political optics of IRC arrangements may be that regulatory sovereignty is eroded *de jure*, in practice *de facto* regulatory sovereignty may actually be increased. This is because cooperation may enhance the capability and capacity of regulatory agencies to exercise their regulatory powers effectively.

How is international regulatory cooperation governed?

There was limited central oversight of IRC. In no country did the role of the lead agency with responsibility for GRP and the regulatory management system have explicit oversight of IRC. Across almost all of the countries, it is clear that there are two common themes in the governance of IRC: (i) for formal treaties and agreements, most countries reported that the ministry responsible for foreign affairs had an oversight role; and (ii) for informal transgovernmental networks, responsibility for IRC generally lies solely with the relevant individual line ministry or public agency.



What is the future for international regulatory cooperation in East Asia?

The growth of IRC since the 1980s has been driven by the combined impact of global economic trends, technological change, and geopolitical developments. Looking ahead beyond the coronavirus pandemic, the first two of these drivers will continue to operate in the next decade:

- (i) global economic trends include the growth in global supply chains, globalisation, the growth of multinational corporations, and pressure by business to reduce technical barriers to trade; and
- (ii) technology driving the Fourth Industrial Revolution from the combination of digitisation, artificial intelligence, cloud technology, big data analytics, and high-speed mobile.

However, on the geopolitical side, there is significant potential for discontinuity with IRC, given the slowdown in international economic integration, the ongoing United States–China rivalry, loss of American leadership, and loss of momentum in multilateral initiatives. As a result, there will be less impetus for IRC from the multilateral agreements that provide for the widening and deepening of regulatory cooperation.

In East Asia, several overlapping regional trade and regulatory initiatives might help drive the future of IRC in the region, including the AEC Blueprint 2025, regulatory provisions in the free trade agreements between ASEAN and other countries in the region, the Asia–Pacific Economic Cooperation and its Agenda on Structural Reform, the Comprehensive and Progressive Agreement for Trans-Pacific Partnership, and the Regional Comprehensive Economic Partnership. However, tensions between the United States and China will inevitably spill over into engagement between second-tier nations making collective agreements harder to achieve in regional forums like ASEAN and the Asia–Pacific Economic Cooperation.

There is an old Danish proverb that ‘it is difficult to make forecasts, especially about the future’. The research participants developed some speculative propositions about how IRC may play out in the future in East Asia. In the box below these are organised under the five key IRC questions of ‘why’, ‘who’, ‘how’, ‘what’, and ‘which’.

Box 1. Future of International Regulatory Cooperation in ASEAN

Why undertake IRC?	To gain economic benefits, and improve regulatory effectiveness, and achieving geo-political imperatives such as the AEC Blueprint 2025 for AMS
Who will countries cooperate with?	Less multilateral and more regional and plurilateral arrangements, the latter built on coalitions of the willing
How intensively will countries cooperate?	Full regulatory integration will be the rare exception to the rule. Rather IRC will start at the less intensive cooperation end of the spectrum, but intensity will grow over time – while stopping short of regulatory integration
What will they cooperate on?	IRC will occur across the spectrum of regulatory policy and practices and to a lesser extent, regulatory governance. IRC will expand but based on a selective case by case organic evolution rather than big push. Cooperation will be more likely to develop newer ‘greenfields’ areas, such as the fourth Industrial Revolution for example, than on ‘brownfields’ areas with more entrenched regulatory regimes.
Which structure will they use?	Growing emphasis on more informal, below the radar IRC mechanisms, such as Trans-Governmental Networks. FTAs and formal trade agreements will have limited role in shaping IRC beyond TBT/SPS. However, IRC will remain important in the TBT/SPS space whereby cooperation can occur as part of the wider regulatory agenda.

AEC = ASEAN Economic Community, AMS = Association of Southeast Asian Nations member state, IRC = international regulatory cooperation.

Source: Author.