



IOSCOs Final Report on Cross-Border Regulation

IOSCO published, on 7 September 2015, its Final Report on Cross-Border Regulation, prepared by the Task Force on Cross-Border Regulation established in June 2013.

Regulators' international experience in developing and implementing cross-border regulation in the global securities markets has revealed the challenges they faced in order to ensure the effectiveness of national regulations, while not unduly constraining the cross-border offering of products and services. In June 2013, IOSCO established a task force to assist policy-makers and regulators in addressing the challenges they face and to give detailed consideration to issues concerning cross-border regulation.

IOSCO's final report states that cross-border regulation is evolving towards increased engagement via several ways of recognition to solve regulation overlaps, gaps and inconsistencies. Although this increased engagement is mostly bilateral, more engagement on a multilateral level is likely to develop as new markets continue to emerge and grow around the world and the use of Memoranda of Understanding (MOUs) in supervisory activity has also increased.

This report presents a series of specific steps aimed at supporting cross-border regulation and at more effectively incorporating the consideration of cross-border issues in IOSCO's work.

The most significant work carried out by IOSCO to date regarding cross-border cooperation includes the Multilateral Memorandum of Understanding - MMoU, which was established in May 2002 and revised in May 2012, on cooperation and exchange of information. The MMoU is the key instrument used by securities markets regulators and supervisors around the world to request assistance, and to exchange information enabling to secure compliance with the tasks entrusted to them in enforcing the securities markets legislation.

The analyses and results of this report are based on a survey conducted among the IOSCO members on their regulatory approaches in cross-border financial activities, including, among others, market intermediaries, securities exchanges and markets, collective investment schemes and market infrastructures.

According to the survey, the challenges faced in the establishment of the different elements for cross-border activities are:

- **From the regulators' perspective:** a lack is observed of coherent and detailed application of IOSCO's standards and principles, a lack of consensus on the level of sufficient quality allowing the national regulator "to trust" foreign regulatory regimes, and a lack of legal certainty in cross-border relations without the existence of warning systems on the treatment of regulatory issues by a given regime. On the other hand, the survey highlighted the fact that cross-border activities in securities markets are subject to less supervision because information exchange systems and cooperation in supervision are not fully developed, and also because of insufficient access to information and documentation in another jurisdiction.
- **From market participants' perspective:** these highlighted certain issues as the existence of different information requirements and different clearing and settlement rules in the area of OTC derivatives markets, or the different frameworks to classify clients (professional or institutional investor definitions). At the same time, the industry highlighted certain areas in which cross-border regulation has been a success, such as, for example, the initiative of the Legal Entity Identifier (LEI).

In addition, the Task Force held three roundtables in Hong-Kong, London and Washington D.C., as well as a public consultation, in order to gather the industry's and other stakeholders' viewpoints. The call received a large number of contributions regarding the challenges in complying with cross-border regulation, and on how can IOSCO facilitate the development and implementation of tools for developing cross-border regulation and promoting greater coordination among its regulatory members.

The report presents a detailed resource for regulators, the Regulatory Toolkit, which includes a package of legislative elements divided into three types for developing cross-border regulation, and provides, for each one of them, practical application examples:

- **National or domestic treatment:** where foreign individuals and/or legal persons, and financial products, are treated under a similar or equivalent regime to that applied to their nationals.
- **Recognition:** where, following a process of assessment and revision of the foreign legislation, the jurisdiction hosting the cross-border activities considers that the applicable legislation is sufficiently comparable to the domestic legislation.
- **Passporting:** where, by means of an international treaty or a similar legal procedure, access to the market or cross-border activity is carried out under common legislation.

The choice of one or more elements will depend on: i) the type of cross-border activities being carried out in a specific securities market and their associated risks; ii) the soundness and efficiency of the foreign legislative regime; and iii) the costs and benefits that, for securities regulators and markets, these elements have in the cross-border activities. This Regulatory Toolkit provides regulators with a tool that allows them to develop, implement and assess cross-border approaches in the regulation.

Link to the document:

[IOSCO Task Force on Cross-Border Regulation. Final Report.](#)