

# Regulating in the Public Interest

## International Trade Union Confederation Comments on Draft OECD Recommendation on Regulatory Policy and Governance

### Overview

Regulations serve legitimate and important public purposes, including protecting workers' rights, welfare, health and safety. The global financial crisis, climate change and Japan's nuclear tragedy underscore the need for stronger and more effective regulation.

The OECD has tended to favour deregulation. It should clearly acknowledge and correct this policy mistake. Specific comments on the twelve draft recommendations follow.

### **1. Regulatory Quality**

Improving the quality of regulation is a worthy goal, but this concept is often used to justify deregulation. For clarity, the explanatory text on regulations being "of critical importance in shaping the welfare of economies and societies" should be integrated into the recommendation itself.

The recommendation aims to ensure that "the economic, social and environmental benefits justify the costs" of regulation. However, important social and environmental benefits often defy quantification. Compliance costs are difficult to measure and businesses have a clear incentive to overstate them in lobbying against regulations.

The recommendation asserts, "Regulatory policy should include a preference for performance based regulation and the efficient functioning of markets." While performance-based regulation may be appropriate in some cases, more prescriptive regulation is needed in other cases. The explanatory text provides no rationale for generally preferring performance-based regulation and the OECD should not recommend such a preference.

### **2. Users of Regulation**

The recommendation begins, "Orient regulatory policy around the needs of users." In fact, regulation should be oriented to serve the public interest. The immediate "users" of any given regulation are only a subset of the general public.

As drafted, this recommendation could easily give business undue influence over government regulations. Beyond the first bullet's call for "consulting all relevant stakeholders," the second bullet calls for "consulting with small business." Businesses should indeed be consulted where they are relevant stakeholders. However, it is unclear why small business should receive additional or special consultation not available to other stakeholders.

If the recommendation explicitly refers to consulting business, it should also refer to consulting trade unions. In any case, the explanatory text should identify workers and their organizations as users of regulation.

The recommendation asserts that inspections and enforcement should cause "no unnecessary burdens to those inspected." Obviously, no one can argue for unnecessary burdens. However, inspections that business might deem "unnecessary" may actually be needed to properly enforce important regulations, such as workplace health and safety.

### **3. Regulatory Oversight**

This recommendation rightly suggests that regulatory oversight bodies be tasked with "promoting the consideration of regulatory measures in areas of policy where regulation is likely to be necessary." Clause 3.2 must be reworded for grammatical reasons: "should be is set forth in mandate."

The explanatory text suggests locating the oversight body "in a finance or economics-oriented ministry." In many national governments, doing so could allow business interests and/or free-market ideology to capture the oversight body.

### **4. Regulatory Impact Assessment**

As drafted, this recommendation again privileges "small business" over other groups affected by regulations. It calls for "minimal disruption to national and international markets." Regulations should not be presented as necessarily disrupting markets to a lesser or greater extent. In fact, markets require substantial regulation in order to function efficiently and sustainably.

## **5, 6 and 8. Reviews of the Regulatory Stock, Performance, and Administrative Appeals**

It is, of course, reasonable to review existing regulations. Honest reviews should be open to either increasing or decreasing the stock of regulations, as warranted by the evidence. Such reviews should not proceed from “explicit targets” to reduce the number or cost of regulations by some arbitrarily predetermined percentage.

All three of these recommendations, as well as the ninth recommendation (discussed below), refer to “businesses and citizens.” (The tenth recommendation similarly refers to “local firms and citizens.”) This language, which effectively means “business and everyone else,” privileges the former. By contrast, the words “worker,” “labour” and “union” do not appear in any of the twelve recommendations or explanatory text.

## **7. Organisation of Regulators**

“Competitive neutrality” is not defined in the recommendation or explanatory text. This term has mostly been used by the Australian government. Depending on how this concept is applied, it could deprive consumers of the benefits resulting from economies of scale and lower financing costs in the public sector.

## **9. Risk and Regulation**

Regulations must contend not only with quantifiable risks, but also with genuine uncertainty that cannot be meaningfully incorporated into cost-benefit analysis. Rather than just acknowledging the precautionary principle’s existence, the recommendation should affirm that this principle is appropriate in the face of uncertainty.

## **10 and 11. Levels of Government**

As drafted, the eleventh recommendation is too polemical in claiming that “barriers at the local or regional level . . . limit competition and impede investment, business growth and job creation.” For example, the Canadian literature concludes that alleged “interprovincial trade barriers” cost less than 0.05% of GDP.<sup>1</sup>

---

<sup>1</sup> Erin Weir and Marc Lee, “The Myth of Inter-provincial Trade Barriers and TILMA’s Alleged Economic Benefits,” Canadian Labour Congress Research Paper #43, February 2007, and Erin Weir, “TILMA’s Supposed Economic Benefits for Saskatchewan,” Canadian Centre for Policy Alternatives Paper, July 2007.

Given the problem's small scale, "adequate mechanisms for resolving disputes across local jurisdictions" should not mean tribunals that give investors special powers to challenge public policy. In most OECD countries, intergovernmental negotiations and the court system already serve as adequate mechanisms.

## **12. International Regulatory Cooperation**

The explanatory text mentions international "competitiveness" as a consideration in formulating domestic regulation. The recommendation should propose international limits on "race-to-the bottom practices," as the previous recommendation does for sub-national governments. The competitive erosion of regulatory standards is a problem not only between sub-national jurisdictions, but also between countries.

The explanatory text mentions "external trade partners." This text, if not the recommendation itself, should clarify that "international frameworks for cooperation" include International Labour Organisation standards and not just trade deals.