

## **BIAC comments on the Draft OECD Recommendation on Regulatory Policy and Governance**

*June 2011*

### **Introduction**

BIAC appreciates the important OECD work on the draft OECD Recommendation on Regulatory Policy and Governance (GOV/RPC(2011)3/REV3) which will update the existing OECD principles and the common understanding among member countries on regulatory policy. Business participated in the initial discussions on the subject at the April 2011 OECD RPC meeting and submitted introductory comments in the BIAC paper "Update of the OECD principles on regulatory policy: The business perspective".

BIAC is pleased to submit written comments to the draft Recommendation that followed the meeting. These comments elaborate on and supplement the BIAC oral messages conveyed at the 10 June 2011 meeting with the OECD Secretariat.

Our comments below follow the structure and sequence of the 12 principles suggested by the OECD in the draft Recommendation.

### **Specific comments on the 12 draft principles**

#### *Principle 1:*

The recommendation should include specific reference to a programme to reduce costs generated by regulation, including administrative and investment costs to companies (see also comments under Principle 4). This will be an important target for Governments in order to ensure regulatory quality. This target is mentioned in Principle 11, covering the sub-national level, but should be applied to all levels of government and therefore should be included in Principle 1.

We believe that it will be important to have independent, third party reviews of progress on regulatory reform and quality in OECD countries. The OECD should perform benchmarking of the individual country reviews against each other, and communicate the results publicly through an easy-to-understand (even visual, colour-coded) scorecard would in order to keep the reform momentum through legislative cycles in the individual countries.

The recommendation should also include the importance of regulatory quality on investments, jobs and economic growth.

### *Principle 2:*

BIAC would recommend that a reference to publication of draft impact assessments be included. This should be seen as a natural complement to the existing proposal that stakeholders should be continuously consulted during the entire process of the design of the regulation.

It would also be useful to mention business, consumers and citizens explicitly when referring to “the public”, both under this Principle and throughout the Recommendation.

Furthermore, BIAC would recommend that stakeholders are consulted already in the drafting phase of regulatory impact assessments (RIA). Consultation should not just include small business, but all company sizes.

### *Principle 3:*

BIAC believes that regulatory oversight is the responsibility of Governments, but oversight bodies should be independent and externally located. Governments should therefore outsource this function to third parties and ensure an open consultation process. Though Principle 7 mentions independence of regulatory agencies when their decisions have significant economic impacts, we find that independence should also apply to oversight bodies.

It will also be important to include that the valuable lessons learned by the oversight body when reviewing regulation should be shared with the regulators and Government agencies.

### *Principle 4:*

The principle should include a definition of all cost elements related to regulatory frameworks. We suggest that total costs comprise direct costs (administrative, financial, investment and enforcement costs to companies) as well as indirect costs (opportunity costs caused by e.g. market monopolies).

### *Principle 5:*

BIAC would suggest that reviews of the regulatory stock should include benchmarking of the performance between countries and sharing of best practise experience. Reviews should be seen as a learning process where the results are used to initiate regulatory changes to improve existing regulatory frameworks. The review processes should furthermore be independently executed.

### *Principle 6:*

The principle would benefit from further clarification and exemplification, such as whether reviewing of performance of regulation would include ex-post RIA. Generalised examples of existing performance reviewing mechanisms could be considered in order to provide guidance to lawmakers.

It should also be considered which kind of target should be applied in order to measure the results of simplification.

*Principle 12:*

BIAC finds it useful that this principle 12 takes into account the importance of global outreach and that policy makers must recognise that regulatory policy is a global issue that require global coordination. A direct mentioning of the goal to ensure a level playing field among business would be useful in this context.

BIAC looks forward to the continued co-operation with the OECD on this important policy instrument and stands ready to provide further comments on forthcoming draft versions of the Recommendation.