

OECD conference «Regulatory policy at the crossroads»

Panel 3B: Regulators and Regulatees: Being friendly without being cozy?

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The focus of the opening session of the conference was better, even smart regulation. Speakers emphasized the quality of the regulatory process, the evaluation of relations and, in general, methodological issues like e-solutions, 24h-availability, etc. An example was the suggestion to use social sciences research to improve the language of laws so the broad population. Another important point was to simplify regulations, applying quantifying «filters» and cost-benefit calculations.

But most interventions concentrated on the world of regulators, i.e. agencies, the various layers of government administration, the imagery of a (more or less efficient) regulatory machinery was evoked often. The society or polity as whole was rarely addressed; at best «stakeholders» were to be consulted. Therefore, a certain centralist, technocratic element in the discussion is unavoidable - the citizen, the political process and political economy questions are much less present.

My goal is to look at broader polity picture, the political and institutional context of regulation, i.e. at the state of «the regulated», drawing from the Swiss example. It is well known that Switzerland ranks very high on competitiveness (WEF, IMEDE, European Innovation Scoreboard, etc.). Due to relatively low debt levels and a very measured fiscal response to the economic downturn, it is in a very good after-crisis position despite the fact that the financial sector contributes approx. 15% to GDP and despite the challenge which the Too-Big-To-Fail problem poses for especially here.

This success is generally attributed to a reasonable tax rate (today, the average of Swiss cantons compared to countries ranks 8th in Europe), but more often, experts cite the general regulatory environment, i.e. an extremely stable and differentiated Rule of law, but also a specific «closeness», i.e. a small organizational distance between citizens («the people») and the state, i.e. the regulators and administrators. Figuratively, political commentators sometimes use the term «identity» to characterize the relations between regulators and regulates in Switzerland.

What does this mean? Without going into the dangerously open field of history and culture, I would like to point to three institutional elements of this «closeness»:

1 Federalism and subsidiarity, with a limited role for the federal government especially with regard to taxes but also with regard to education, police, infrastructure, which are all regulated at the cantonal level. Most importantly, the specific implementation and enforcement (if not also interpretation) of federal law is also in cantonal or even communal hands.

The most important consequence of this distribution of competencies and powers is a sharp competition between jurisdictions, not just about tax levels, but for good regulation (and services) in general. So the real driver for better regulation is not well designed process and/or sophisticated methods and evaluations but economic and fiscal success, i.e. attractiveness for people and business.

2 Direct democracy, i.e. not just participation in the sense of involving stakeholders and/or a exploring the will of the public, but as the ultimate, binding legitimation for regulatory decisions. Thus, tax rates at the cantonal as well at the communal level are voted on, and the VAT at the federal level can only be changed (i.e. increased) by a constitutional amendment which requires the majority of the voters and of the cantons. In the same vein, the Swiss voters have adopted with a four-fifth-majority a constitutional debt brake which cannot be overturned by parliament.

3 A third element for «closeness» is certainly the size of population relative to the globalized Swiss economy and Switzerland's role an important financial and trade center of the world (with the highest number of global players per capita). The multiple, complex and often vast regulatory requirements call for multifunctional experts, and this expertise can only be provided in a relatively small pool if people take on multiple, sometimes even conflicting roles (or wear many hats, as the Swiss saying goes). In politics, the limited pool of resources requires active citizen participation, i.e. part-time civic duty in

- Communal governance and administration
- Cantonal parliaments and/or (in smaller cantons) governments
- Both chambers of parliament at the federal level
- Countless trade, professional and civic associations

With the exception of most cantonal government and the federal council there are almost no professional politicians in Switzerland. A major source of income and the organizational base for the majority of the MP's are interest groups ranging from the big trade and industry association, the unions etc. to

“idealistic” groups of all kind. This direct representation of special interests beyond party politics or ideological differences allows for an efficient, cost effective mechanism that doesn't need much lobbying from the outside. Another consequence of the limited pool of political resources and the need to find compromises is an extensive formal, pre-parliamentary consultation process.

Four examples, two «positives» ones and two rather critical ones, shall illustrate these Swiss peculiarities of the regulatory context:

I Taxes: Individual self-assessment for income taxes (with the exception of foreign nationals) reflect a contractual relationship between citizen and tax authority, i.e. the state. This results in very high tax compliance. The safety net from the taxman's point of view is a rather high withholding tax on interest and dividends of 35% (which can be reclaimed). Tax evasion results in very costly administrative punishments but not in criminal charges. By the way: Tax authorities are the most ardent supporters and defenders of system.

Companies have in most cases the possibility to «talk to the taxman» in order to adapt to or to smooth out changes in profit. For these procedures, the cantons use specific rules and toolboxes which can be challenged. Corruption cases are extremely rare.

The flexibility with regard to income tax and corporate tax, and the advantage of close relations to communal and cantonal tax authorities contrast with the bureaucratic application and enforcement of the VAT at the federal level.

II SME: The federal government and more and more cantonal and municipal administrations) has introduces a SME-compatibility test for all new laws and regulations with the goal to

- avoid a competitive bias of all regulations against SME due to economies of scale effects
- avoid a streamlining of relations which would lead to less variety between jurisdictions and thus to less innovation
- avoid regulations as the lobby result of partial, special interest (e.g. barriers to market access of competitors, special deals and subsidies)

Examples for successful application of the SME-compatibility Test:

- Employer tax form
 - Accountancy rules in corporate law
- III Regulations of Exchanges: Lack of information disclosure rules and/or enforcement of these rules.
- IV Difficulties to find a political «solution» for the TBTF-challenge in Switzerland (with its two very large financial institutions).

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