

# The Model Laws of the Regulatory Institute

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## Abstract

*This article explains why comprehensive, adaptable and modular international model laws that point at regulatory choices instead of anticipating them could bring law-making to another level both in terms of regulatory completeness and output. Such model laws protect diversity in a smart and targeted way. The article claims that there is space for an organisation to serve as an additional regulatory model pole by elaborating and disseminating such model laws.*

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## Introduction

Model laws have existed in the United States since the 19<sup>th</sup> century<sup>2</sup> and in Canada since 1918.<sup>3</sup> They have proven to be useful tools in these two and other federal countries. Model laws provide some alignment and a minimum regulatory quality, namely by listing elements that otherwise might not be reflected in the real-life laws.

Model laws also have been developed internationally.<sup>4</sup> However, such international model laws do not necessarily fit all countries, as there is more diversity around the globe than in one single federal country. Hence, the question arises of how model laws can be better developed for an internationally diverse audience.

To answer this question, we will describe the international landscape of law-making, the shortcomings of current international model laws, the Regulatory Institute’s model laws and their utility for jurisdictions and CALC members. Moreover, we outline some strategic and organisational aspects of the development of model laws.

## Regulatory Institute’s Model Laws Project – Initial Observations

In the early years of the Regulatory Institute (2015 to 2017), it developed, on the basis of public inventories and databases,<sup>5</sup> a matrix with more than 1000 jurisdictions adopting laws (states and intra-state entities like Tamil Nadu in India, Patagonia in Argentina and Colorado in the U.S.) represented in rows. The columns listed more than 1000 topics covered by legislation of at least one jurisdiction. When analysing the matrix, the Regulatory Institute discovered the following:

- In the matrix with more than 1 million fields created by these two parameters, most fields were empty. Very few topics were covered by all jurisdictions.
- There was no logic detected behind the pattern of topics or sectors being covered or not, except that some topics, such as the fight against money laundering, were pushed by international conventions into all jurisdictions and some other topics or sectors<sup>6</sup>, like penal law, are so ancient and basic that we find them everywhere. But generally, and for the bulk of topics, the Regulatory Institute could not identify any reason why a certain topic was relevant for a certain jurisdiction and not for its neighbour jurisdictions with similar conditions. Even paramount topics like the prevention and sanctioning of child abuse have not found a regulatory response in all neighboring jurisdictions, though the sociocultural factors and thus

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2 The Uniform Law Commission was established in 1892: see About Us at <https://www.uniformlaws.org/aboutulc/overview>.

3 The Uniform Law Conference of Canada was established in 1918: see What We Do at <https://www.ulcc-chlc.ca/About-ULCC/What-We-Do>.

4 See the [Model Laws Library](https://www.howtoregulate.org/model-laws-library/) of the Regulatory Institute, available on its website at <https://www.howtoregulate.org/model-laws-library/>.

5 At the time, the research was based on the Global Legal Information Network managed by the U.S. Library of Congress, a Chinese website and a commercial legal information service provider (LexisNexis).

6 We use the term “sector” for a group of thematically close topics.

the prevalence of child abuse are similar. Thus, the Regulatory Institute assumed at the time that there is, in quite some jurisdictions, a lack of rationality regarding the selection of topics or sectors to be regulated. This “lack of rationality” hypothesis has in the meantime been, to a modest extent, confirmed by episodic insights into lawmakers’ considerations. It triggered the establishment of a decision making framework for the selection of topics or sectors to be regulated which has recently been published on the Regulatory Institute’s Blog.<sup>7</sup>

- Most jurisdictions had very few laws in total. Roughly speaking, the number of laws correlated with the income of the jurisdictions. Accordingly, the ability to adopt laws and thus to regulate seems to depend on income; it costs to develop and apply laws. The ability or inability of jurisdictions to adopt and apply laws points to a capacity issue. This triggered our interest in the question: How can the capacity of jurisdictions to adopt laws be increased? Here the model laws come into play. Good model laws can reduce the burden of elaboration of regulation and the burden of application/enforcement, for example, in laws permitting enforcement via third parties. By this intra-administrative burden reduction, good model laws can also positively impact the regulatory planning and management capacities of jurisdictions.

### **Why Existing International Model Laws do not Suffice**

Before investing in developing its own model laws, the Regulatory Institute checked which model laws already exist in an international context. It found out that for most topics and sectors, there was no model law. In addition, the existing model laws were mostly incomplete in terms of regulatory techniques.<sup>8</sup> They are lacking important regulatory techniques that would have made the model law more effective.

Where does this bold judgment come from and how is it to be explained? We assume that it comes from a difference of perspectives. Those drafting (model) laws know some or all existing laws of the same sector or topic from different countries/jurisdictions and some laws of their own country for other sectors or topics. But they do mostly not know the many regulatory techniques used in the vastest area of the matrix, the (combined) other countries/jurisdictions and other sectors.

The Regulatory Institute has inventoried hundreds of regulatory techniques from areas of the matrix that average drafters are not familiar with.<sup>9</sup> This creates a difference in the knowledge base that explains the judgment as “incomplete”. There is thus presumably a knowledge gap between the knowledge the Regulatory Institute operates with when

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<sup>7</sup> Available at <https://www.howtoregulate.org/choosing-regulatory-topics/#more-1615>.

<sup>8</sup> This is now confirmed by the Regulatory Institute’s [Model Laws Library](#) in which very few model laws are deemed to be fairly complete.

<sup>9</sup> Admittedly, there might be hundreds of further regulatory techniques that the Regulatory Institute has not yet inventoried. To find them all is a tremendous undertaking. With the same time investment, one can identify the first hundred regulatory techniques, the next 30 or so additional regulatory techniques, the next further 10 or so regulatory techniques and so on. There is a decreasing output per time investment unit. Hopefully, artificial intelligence can help us soon.

compared to the knowledge of an average drafter of (model) laws. This knowledge gap is thus the first and foremost justification for our model laws.

The second reason is that ever more regulatory topics or entire sectors emerge and merit being addressed by regulation. Take the example of artificial intelligence. Ever more countries see a need to regulate at least certain aspects of the use of artificial intelligence. Of course, the Regulatory Institute could have waited until the first 10 countries have regulated certain aspects of artificial intelligence to combine the respective elements into a model law and to complement that model law with further regulatory techniques from other countries and sectors. But then the Regulatory Institute would have missed an opportunity to make available its cross-country-cross-sector perspective for the first 10 countries. Drafting a model law from scratch gave the Regulatory Institute a better stance. Since then it could refer to precise model provisions in various public consultations. Maybe even the general approach of the model law has been perceived as inspiring here and there.

The Regulatory Institute thus produces both:

- “assembling model laws”, meaning model laws merging elements from various existing laws of the respective sector and complementing the merge with regulatory techniques of completely different sectors, and
- “pioneering model laws”, meaning model laws that had no sector laws as a basis, but that were conceived with structural elements and regulatory techniques of completely alien sectors.

### **Characteristics of Regulatory Institute’s Model Laws**

All model laws have the following in common:

- They use regulatory techniques of the same sector and other sectors.
- They are modular, non-prescriptive, inspirational and offer options, not decisions.
- They are rather long and comprehensive<sup>10</sup> because they aim at showing many possibilities so that the drafters can select the appropriate ones and prompt other conscious decisions.
- They are open to extensions or enhancements.
- They are, to the extent possible, policy-neutral, but are of course based on certain policy goals presumably motivating the lawmakers of the respective sector, for example reducing harm.
- They invest in implementation aspects and thus contain *inter alia* comprehensive empowerment lists. They also integrate third-party enforcement as a means to compensate or complement (often weak) enforcement by state authorities.
- They are open to international cooperation because international cooperation benefits us all.

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<sup>10</sup> However, the Regulatory Institute so far never displayed the full range of regulatory techniques that it disposes of because such full display would render the model laws extremely difficult to digest. Users who wish even more possibilities for enhancement should contact the Regulatory Institute.

- They are not perfect for formal aspects, as formal aspects vary widely from jurisdiction to jurisdiction and thus are not a worthwhile investment of time and resources for the Regulatory Institute.

### **Example – Model Law on Internet Relationships and Virtual Worlds**

The model law on internet relationships and virtual worlds<sup>11</sup> is presented with more detail here not least because the sector “internet legislation” replicates a pattern we observe in the legislative landscape in general: countries have largely very different views on which topics merit a law in the first place, and so for most topics there are only a few countries or parts of countries which decide to legislate. Likewise, countries have very different views on which aspects of the internet merit being regulated. Some countries decide to regulate certain aspects, while other regulate at least partly different ones. The Regulatory Institute could not detect any reason for the particular piece-meal approaches and assumes accidental factors as “drivers”, such as a problem highlighted in the media or brought to the attention of a legislator being victimized personally, for example by a certain type of fraud.<sup>12</sup> The Regulatory Institute observed new laws dealing with this or that topic or even just a particular aspect of the internet, all of them only tackling a fringe of the long list of topics or aspects that at least one country or scientist has (rightly!) spotted as meriting regulation. With all due respect to jurisdictions and recognising the many practical difficulties of lawmaking plus the many cultural and political differences, the Regulatory Institute supposes that there is some margin towards more rational legislative management. Some jurisdictions at least could have a better look at the full list of topics and aspects that might merit being regulated, make a selection on that basis and plan how best to regulate in a coordinated way for the selected topics and aspects.

Of course it is not up to the Regulatory Institute to close that margin. It can at best try to show a path towards more rational legislative management. In the case of the internet, we chose a brutal path: demonstrating that there is no need for an incomplete piece-meal approach in terms of topics and aspects, but that all (potentially) regulated topics and aspects can be integrated into one single piece of legislation. That piece of legislation, however, would need to refer to existing domestic legislation so that an integrated legal fabric emerges in which the internet is not exempted from the ordinary national legal order, but fully integrated into it. This legal strategy is, in our view, the only viable way to regulate the internet. Creating a completely separate legal sphere would create permanent friction and unjustified differences between internet-based and other activities, which is even more problematic as there are also hybrid activities.

The model law on internet relationships and virtual worlds became pioneering in two senses:

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<sup>11</sup> Available at [https://www.howtoregulate.org/internet\\_rels/](https://www.howtoregulate.org/internet_rels/).

<sup>12</sup> Likewise, the policy paper research led to the result that there are very few issues, such as protection of minors from grooming, which are in the limelight virtually everywhere, but for most aspects, there is only an erratic awareness here and there, whilst there is absolutely no reason why they should not be prevalent in most countries.

- establishing quite a comprehensive list of topics and aspects that could or even should be regulated, facilitating the choice for jurisdictions,
- suggesting an adaptable partly stand-alone and partly pure interface legal structure that is open to the integration of ever more and future aspects to be regulated.

Readers of the model law hopefully come to the insight: yes, it is possible to embed the “internet” into a classic national legal order. Yes, we can put an end to what some call “the internet Wild West”.

We note here that at least the second pioneering function could not have been reached by a classic Regulatory Institute article that presents suitable regulatory techniques for a certain sector.<sup>13</sup> This added value is also one of the reasons why the Regulatory Institute slightly shifts its activities from those comparative articles on regulatory techniques in a certain sector to model laws, whilst the latter, too, are based on comparative research where laws already exist.

### **How Jurisdictions can Benefit from Model Laws**

Jurisdictions and their drafters have two advantages when using fairly complete model laws:

- Easier production of laws because drafters do not need to start from scratch and are offered from the beginning important elements for their law,
- More conscious choices and more regulatory techniques and thereby better laws.

To illustrate, let us look at professional wear, for example, professional wear for high mountain regions. Of course, it is nice that local clothing traditions survive. But it might come at a cost. If Andean mountain-wear tailors were to say “We are fine with our tradition, we do not need to learn from our Nepalese colleagues”, some persons wearing the Andean clothing might not survive because the Andean clothing does not protect body parts from freezing as effectively; and of course vice versa: the Nepalese colleagues might learn from their Andean colleagues. Moreover, despite their respective great tailor traditions and historic experience, both the Andean and the Nepalese tailors might learn from Western or Chinese high mountain clothing manufacturers using new materials with higher insulating values and better release of humidity; and of course vice versa – there is a reason why Western and Chinese mountain clothing manufacturers studied the Nepalese and Andean tailor traditions. Nobody is protected from the need to learn. To put it bluntly: not even considering tailor solutions developed elsewhere may cause casualties.

We believe the same is true for regulation. Regulating on life-impacting sectors<sup>14</sup> without taking at least into consideration regulatory techniques that have proven to increase the efficiency of regulation from other sectors and countries is equivalent to saying, “We are fine with our tradition, we do not need to learn from our Nepalese colleagues and even less so from Western or Chinese high mountain equipment manufacturers.” It also causes

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<sup>13</sup> Such articles are presented on the Institute’s Blog, available at <https://www.howtoregulate.org/category/sector-specific/>.

<sup>14</sup> The Regulatory Institute estimates that there are more than 50 such regulatory topics, going from arms control, over various environmental regulations, over several dozen product regulations, to medical legislation, elderly care legislation, minor protection legislation etc.

casualties sooner or later, because the enforcement of requirements is weaker and the laws less effective than what they could be, as the Regulatory Institute noted for the many laws on alcohol and tobacco control that it evaluated.<sup>15</sup> At least at this point, our instinctive sympathy for diversity and traditions in legislation should be subject to second thoughts. Features of high mountain clothing, increasing warmth coming from elsewhere should at least be considered, but mostly they should simply be integrated into the tailor's design. The same applies to many regulatory techniques that can make legislation more effective. This does not mean that the Regulatory Institute favours uniform legislation per se, its model laws consciously point to so many choices. Western suits become a problem in India and elsewhere where, all of a sudden, there is a need to cool down offices to compensate for the additional layers of fabric. The same applies to regulation. Regulation imported from better resourced jurisdictions requiring important administrative resources for its enforcement can easily do more harm than benefit in jurisdictions that lack these administrative resources. But again, referring to a wider range of regulatory techniques can help. There are now systems designed to create a mutual control and check of interdependent economic actors that do not require much administrative resources. With the help of these regulatory techniques, the difficulty of lacking administrative resources can at least partly be overcome. These regulatory techniques are also displayed in the Regulatory Institute's model laws. Double-checking a legislative project with the help of the Regulatory Institute's Handbook "How to regulate?"<sup>16</sup> and the model laws can thus – in the case of life-saving legislation – by itself save lives. It is thus a quality control and quality-increasing measure to refer to model laws and to use the Handbook at least for these effectiveness-enhancing regulatory techniques.<sup>17</sup>

A desired side-effect of the use of model laws is that lawmaking becomes more efficient. Instead of wasting time on basic design questions and looking for elements to be placed, the design can be chosen from a range of model designs<sup>18</sup> and the particular elements to be integrated as well – both for clothing and regulation. Thereby, the tailors or drafters save time to focus on what adaptation to the local context is required. Or they can produce more regulation, to cover ever more topics of life that require regulation, whilst regulatory human resources are scarce.

Not to be misunderstood: the Regulatory Institute does not advocate for a one-size-fits-all policy. No model law should be cast into regulation as is. A legislative draft based on model laws and inventories of regulatory techniques that can be added will provide better results than today's predominant production mode of starting from scratch or with the previous legislation on the topic. Laws based on high-quality modular model laws and inventories of regulatory techniques such as the Handbook will be diverse for good reasons, and this

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15 The evaluation took place when elaborating the following articles: [Alcohol Regulation \(2018\)](#), [Tobacco Control Regulations \(2018\)](#), [Drawing a clear health line under addictive products regulations Part 1 \(2021\)](#), [Drawing a clear health line under addictive products regulations Part 2 \(2022\)](#).

16 Available at <https://www.howtoregulate.org/the-handbook/>.

17 The Handbook offers also a comprehensive quality control chapter that encompasses many more aspects.

18 In particular the Model Laws Library provides a variety of models.

diversity will be based on conscious decisions; it is not certain that they will be more uniform than laws today.<sup>19</sup> However, they will not be haphazardly diverse due to a particular tradition or a perspective necessarily limited to what one can see from a single field in the more than 1.000.000 fields matrix combining jurisdictions and topics. Drafters, understandably, are usually familiar with the legislation of their jurisdiction and some legislation of other jurisdictions regarding their specific topic or sector.<sup>20</sup> They are rarely aware of regulatory techniques used in other topics/sectors and other jurisdictions at the same time, thus in more than 99.9% of the matrix.

The unique cross-topic and cross-jurisdictions perspective that emerged with the Handbook is also shaping the model laws; it would become even stronger with the involvement of CALC members in the elaboration of future model laws. Imagine how rich model laws would be if even just 1/10 of CALC members were to contribute their respective knowledge. A noteworthy contribution from CALC members could also adapt the model laws to formal requirements of the largest community of lawmaking practitioners, rendering them more user-friendly.

### **Strategic Aspects of Model Laws**

Currently, there are three trading blocks<sup>21</sup> drawing others behind them for certain types of regulation. All three trading blocks link strategic interests to the dissemination of their domestic regulation.<sup>22</sup> They do not strive for the dissemination of the best possible regulation for the respective jurisdiction, but simply of their own, which still has scope for improvement, at least in terms of regulatory techniques. The three trading blocks are partly also followed by other states without there being any compelling reasons; thus just because their regulation is readily accessible, translated and known.<sup>23</sup> The three trading blocks serve thus as poles that provide orientation and that attract others.

We claim that the three poles are partly also followed because there is no well-publicised alternative in terms of good regulatory examples. Only some Latin American states try to systematically build up regional regulatory alternatives, with remarkable smartness and success<sup>24</sup>. But, at least for the rest of the world, there is still room for a fourth regulatory model pole, which is striving to disseminate the best possible regulation with the best

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19 This statement might be regarded as counter-intuitive: Normally model laws trigger harmonisation of laws across jurisdictions. But if the model laws are modular, pointing at various possibilities and if there are inventories of regulatory techniques to beef them up, the finally adopted laws might content-wise heavily deviate one from another.

20 As a reminder of Footnote 6: We use the term “sector” for a group of topics.

21 We refer here to (1) the North American Free Trade Agreement zone including the United States of America, (2) the European Economic Area, surrounded by Switzerland, Turkiye and certain East European states and (3) the People’s Republic of China plus states dependent on it.

22 See for example, Anu BRADFORD, “Digital Empires: The Global Battle to Regulate Technology”, 2023, Oxford University Press.

23 The mechanisms of such voluntary following are described in Anu BRADFORD’s earlier publication “[The Brussels Effect](#)”, 2020, Oxford University Press.

24 See <https://parlatino.org/> and in particular the model laws displayed at <https://parlatino.org/leyes-modelo-aprobadas-por-el-parlatino> (both links are at times very slow, but work).

possible adaptation to the respective jurisdiction, regardless of where the regulatory elements originate from and regardless of strategic or commercial interests.

The Regulatory Institute shortly examined the question of whether it could become a modest, mini-nucleus of a future fourth regulatory model pole. As ridiculous as the idea might seem at first, there are some pros, such as our striving for regulatory quality. The Regulatory Institute is not bound by particular traditions and even less so by political or financial affiliation. It has no particular commercial or strategic interests and is striving for the best possible integration of needs and conditions from countries around the world. However, in terms of standing and resources, the Regulatory Institute is anything but ideal. It operates with extremely scarce resources and without any surveillance structure. It is not institutionally embedded. Its reputation is still not widely known. Therefore, it is clear that, if it were to become the future fourth regulatory model pole, the Regulatory Institute would require a solid institutional embedding. It is unlikely that any financially powerful institution would take over the Regulatory Institute so that it can fulfil this role. As long as the Regulatory Institute stands alone, it definitively cannot become the fourth regulatory model pole.

Therefore the Regulatory Institute looks for another organisation with a better international standing that could become that fourth regulatory model pole; and to which the Regulatory Institute would simply contribute to the extent it was required to by the other organisation. Ideally, that organisation has already a broad outreach, whilst not being overshadowed by too heavy diplomatic in-fighting and bureaucracy. To be credible and to avoid resistance, the organisation should not have any strong political agenda and should be oriented towards regulatory quality.

### **What is in it for Individual CALC Members?**

Let us leave behind these high-flying considerations and answer the concrete and grounded question: what is really in the Regulatory Institute's model laws for individual CALC members? There are two potential gains for CALC members, one as recipient and one as actor:

- As recipients, CALC members can obtain a model law on demand. The Regulatory Institute has long term goals, but it decides only at the very last moment which model law is to be developed next. It reacts to needs expressed by regulators. By expressing need-based requirements for new model laws, CALC members can obtain a model law useful for their upcoming legislative activity<sup>25</sup>.
- As actors, CALC members can disseminate their knowledge via the Regulatory Institute's model laws. Whether you are a specialist for a certain sector dealt with in a model law, a specialist of another sector or just a generalist, you can always

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<sup>25</sup> In addition, CALC members can of course also use the Regulatory Institute's [Model Laws Library](https://www.howtoregulate.org/model-laws-library/) (available at <https://www.howtoregulate.org/model-laws-library/>) which collects model laws developed by others. Most of the collected model laws do not fulfil our quality expectations, but to use them is mostly still better than drafting from scratch: generally speaking, you are less likely to miss important elements when using model laws. Moreover, the collected model laws have different structures from which drafters might wish to choose.

comment on draft model laws and suggest amendments. As the Regulatory Institute wishes to integrate knowledge from as many sectors and jurisdictions as it can, your comments and suggestions will all be carefully examined and mostly be integrated into the final version of the model laws. If you wish to suggest an entirely new model law, you are welcome to as well. Either path enables CALC members to become part of the thrilling adventure that constitutes the Regulatory Institute's model law project.

### **Next Model Laws - unless You Change the Priorities**

Besides the expressed or presumed needs of regulators, the Regulatory Institute tries to estimate what the added value of a new model law would be. Currently, two sectors are under investigation. The two sectors are not new at all, but the Regulatory Institute supposes that, due to periodic updating, there will both be a consistently high need for respective model laws and a quite important added value that new model laws could bring along:

- *Animal protection*: In this sector, the Regulatory Institute observes again that the aspects regulated by the various jurisdictions vary quite widely and it seems that hardly any legislation encompasses more than half of the aspects worthwhile being regulated. Therefore, the elements of a comprehensive animal protection model law might serve well to complete the legislation in many jurisdictions.
- *Public tenders* with special focus on mining licenses and public infrastructure work: The Regulatory Institute supposes that much can be won for quite some countries around the world that still attribute mining licenses and public infrastructure work without neutral, abuse-resilient public tender procedures. Moreover, the Regulatory Institute envisages combining classic public tender law with regulatory techniques reducing corruption and means to reduce environmental burden. The model law might thus be innovative by intertwining different policies to render them all more efficient and mutually supportive. Let's see whether the Regulatory Institute manages to levy this potential which, again, could not be levied by its classic articles comparing regulatory techniques of a certain sector.

### **Summary**

The main points advanced in this article can be summarized as follows:

- Not so much systematic analysis and reflection, but rather accidental factors seem to determine (a) the sectors and topics that jurisdictions regulate,<sup>26</sup> (b) the aspects that regulation covers<sup>27</sup> and (c) the regulatory techniques and other elements that jurisdictions use when regulating. Model laws increase the rationality of decisions

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<sup>26</sup> See above, Strategic Aspects of Model Laws and Next Model Laws - unless You Change the Priorities.

<sup>27</sup> For example, see above Next Model Laws - unless You Change the Priorities.

at levels (b) and (c) and, indirectly, the range of options for the selection of sectors and topics (level (a)).<sup>28</sup>

- The Regulatory Institute has started developing comprehensive, adaptable and modular model laws that point at regulatory choices instead of anticipating them.
  - Comprehensive, adaptable and modular model laws can make laws better and more effective, and in doing so save and improve lives at a quite important scale.
  - A shift in the production of regulation from a craftsman-like, tradition-based approach with an accidental selection of (and thus often missing) elements/regulatory techniques to a production, based on comprehensive, adaptable and modular model laws, which of course need adaptation to the respective jurisdiction so that diversity is not necessarily reduced, but preserved in a smarter, better targeted, non-accidental but conscious way. In addition, inventories of regulatory techniques such as those in the Handbook “*How to regulate?*” should be used.<sup>29</sup>
  - The suggested shift would improve the quality of laws/regulation and increase the capacity of jurisdictions to cover more regulatory topics or sectors which emerge as a consequence of new technological, economic and societal developments.
  - An organisation other than the Regulatory Institute should become the hub for comprehensive, high-quality, neutral, modular and adaptive model laws and thereby a fourth regulatory model pole, complementing the pole functions of the current three large trade blocks and thus closing a loophole in today’s regulatory landscape.
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<sup>28</sup> See above the last paragraph of Next Model Laws - unless You Change the Priorities.

<sup>29</sup> As explained above in n. 14, the model laws cannot display all possibly suitable regulatory techniques. Therefore, there is room for further improvement.