

ETUC and WWF statement in response to the European Commission's 'Better regulation: Joining forces to make better laws'

The European Commission published a communication on 'Better regulation: Joining forces to make better laws' on 29 April 2021. The long-delayed communication sets out the changes that will be made to the existing Better Regulation agenda, notably the introduction of a 'one in, one out' approach for policy-making, which reinforces the already predominant focus of the Commission on burden and cost reduction. Unfortunately, the Commission persists in failing to address EU law making as a positive and necessary investment in and for society as a whole, with a long-term perspective.

The EU's 'Better Regulation' agenda sets out the processes the Commission follows for assessing impacts, consulting citizens and stakeholders, and ensuring coherence when designing new policies and evaluating the application of existing laws. What the Better Regulation rules prioritise has an impact on the shape and ambition of the Commission's proposals. In this regard, the Commission's emphasis on cost and burden reduction risks overshadowing the need for ambitious initiatives and effective implementation of EU flagship initiatives such as reaching climate neutrality by 2050 at the latest and the objectives set out by the European Pillar of Social Rights.

ETUC and WWF recall the importance of quality legislation in the interest of people and planet, and have the following reflections on the communication.

'One in, one out'

The new communication sets out how the 'One in, one out' approach, announced by President von der Leyen in September 2019, will be applied. The aim is to "proactively seek to reduce burdens imposed by existing legislation" when introducing new burdens. The Commission also stresses that it will not be mechanical (one new legislation does not mean an old one is repealed) but rather "seek to offset the burdens placed on people and businesses in some legislative proposals with savings in others in the same policy area".

However, how this will be applied in practice is still unclear. The communication states that 'compliance costs' will be quantified in the impact assessments and a report on the number of burdens introduced and offset will be provided in the Annual Burden Reduction Survey. Beyond this, it is not made clear how these costs will be evaluated nor quantified. The cost of inaction, which is particularly important to take into account when considering environmental and climate policy, is not mentioned at all.

ETUC and WWF have long contested the need for the 'one in, one out' approach, since it represents a quantitative assessment of legislation as a short-term burden and a cost rather than focusing objectively on the quality of regulation and its merits, in the medium and long term. The envisaged narrow focus on burden and cost reduction is inconsistent with the needs and realities of EU policy making, and could jeopardise the Commission's responsibility to deliver quality regulation, and create a chilling effect on any new environmental or social legislation.

Another aspect of concern in the 'one in, one out' approach set out by the Commission is the possibility that 'trading' across policy areas might happen in exceptional circumstances. The need for new legislation in one area should not be used to justify cutting regulations in other areas where existing legislation may still be justified. This in-built flexibility of the 'one in, one out' mechanisms only seems to try to cover up a flawed approach to law-making.

In the same vein, the COVID-19 crisis must not be used as an excuse to open up for regulatory exceptions for SMEs. A green, inclusive and fair recovery must not be built on lowering standards, as this only risks creating double-standards and a race to the bottom, taking forms such as social and environmental dumping. Business interests alone cannot be put on an equal footing with the general interest, which also includes the interests of workers, citizens, consumers and the environment.

Mainstreaming the SDGs

On a more positive note, the communication commits to mainstreaming the United Nations' Sustainable Development Goals (SDGs) to ensure all policies contribute to the achievement of the 2030 Agenda. Concretely, relevant SDGs will be identified for each proposal and how the initiative will support their achievement will be examined. Links to the SDGs will be made in impact assessments and evaluations.

These are positive developments that should help ensure that a sustainability perspective is taken for all initiatives. However, it must be avoided that this turns simply into a 'checkbox' exercise showcasing only a few SDGs per initiative – a holistic perspective that takes into account the impact on the SDGs as whole must be taken. For example, it cannot be concluded that an initiative contributes to one SDG if it creates negative trade-offs in another SDG. All three dimensions of sustainable development – economic, social, and environmental – with the same level of detailed analysis and accuracy, taking into account both qualitative and quantitative evidence. The principles and objectives set out by the SDGs are indivisible and must not be undermined by burden and cost reduction targets.

Likewise, the assessment of impacts of regulation on EU fundamental rights and values still needs to be strengthened. Human rights cannot be approached from the perspective of cost reduction, regulatory and administrative burdens. The legally binding Charter of Fundamental Rights of the EU must be the compass to EU actions and initiatives, including legal initiatives.

The Green Deal oath: 'Do no significant harm'

In the European Green Deal, the Commission committed to introduce a 'green oath' in the Better Regulation rules to ensure that all EU initiatives 'do no harm' and pull together to help the EU achieve a successful and just transition towards a sustainable future. ETUC and WWF have therefore called for this communication to address how this would be put into practice.

The communication explains that a 'do no significant harm' analysis will be included in the assessment of the preferred option in impact assessments and the explanatory memorandum accompanying all legislative proposals will explain how each initiative upholds it. This is definitely a positive step, as it means the Commission should have to consider environmental impacts more fully in impact assessments.

Now, a robust methodology for implementing 'do no significant harm' should be presented via the process to update the Better Regulation toolbox, announced in the communication. This approach must be complementary to and not replace the prevailing precautionary principle enshrined in the Treaties.

Strategic Foresight

The Commission also announces that it plans to introduce a 'strategic foresight' perspective, in order to 'future-proof' EU policymaking and take a longer-term perspective that takes into account megatrends. Taking a long-term perspective is essential to meeting the big challenges the EU is faced with, such as climate change and the social dimension of the digital and green transitions. Again, the methodology for the integration of strategic foresight into policy-making should be detailed in the toolbox. Fundamental rights, the precautionary principle and a human-centred approach must always be respected when developing digital solutions.

However, taking this longer-term perspective seems to be in direct contradiction to the very short-term 'one in one out' approach. Short term costs should not hinder the Commission from taking policy decisions with long term benefits. The 'strategic foresight' perspective must consider legislation primarily as an investment in the future and not as a cost.

Co-operation among legislators

The Commission also intends to engage more closely with the European Parliament and the Council on issues linked to the 'Better Regulation' agenda, in particular when it comes to their efforts in assessing and monitoring the impact of EU legislation, including also costs and savings associated with legislative amendments in the course of the negotiations between the co-legislators. ETUC and WWF consider that Better Regulation should allow the law-makers to take informed decisions, and not pre-empt the essential democratic debate or reduce the legislative discretion of the Council and Parliament with reference to a dogma based on reducing costs and burdens. In order to ensure accountability, it is important decision-making processes are both democratic and transparent.

Likewise, the constitutional right of Member States to go beyond established minimum standards when transposing EU directives into national legislation must be respected and not be criticised as 'gold-plating'. It is to the Member States to define how best to transpose EU law into their respective national system and adapt it to their needs, while not using EU law to downgrade existing rights.

Public consultations

The communication also announces changes to how public consultations will be carried out. In particular, from now on the roadmap consultation and the public consultation will be combined into one 'call for evidence'. In principle, this can be a positive step enabling civil society to concentrate efforts towards providing input at one moment. It should not however be used to reduce opportunities for feedback or arbitrarily limit the range of stakeholders.

The communication also commits to improving the questionnaires for more balance between open and closed questions, and publishing the feedback on the consultations within 8 weeks after closure, while better distinguishing the contributions from different types of stakeholder and respecting the prerogatives of social partners. These are positive steps which should ensure more transparency and stakeholder approval of the process. Further steps for improving the questionnaires for public

consultations should also be considered, such as ensuring that the questions and policy options are based on sound evidence and science and that the replies of different respondents are weighted properly according to their representativeness.

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