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‘One in, one out’ at EU level

Business supports the introduction of a ‘one in, one out’ (1in-1out) principle at EU level. In order to deliver, 1in-1out will require the commitment and active engagement of all EU institutions. If well designed and effective, 1in-1out can help advance the EU’s Better Regulation agenda, improve coherence and simplicity of EU legislation and provide future-proof regulatory frameworks that benefit society at large in a proportionate and cost-effective manner.

1in-1out aims at controlling the flow of costs stemming from new regulation and keeping the overall level of regulatory burdens stable by retracting an existing burden when introducing a new one. If established at EU level, 1in-1out would not be a number-based mechanism (1 law in-1 law out), but be applied by focussing on the regulatory costs: 1 euro of new regulatory cost (“in”) is to be offset by the removal of 1 euro of regulatory cost (“out”).

1in-1out is an increasingly common component of regulatory policy in the EU and internationally. It helps delivering smart, simple and cost-effective regulation that supports competitiveness because it allows companies to invest time and resources for example in R&D and innovation activities instead of handling red tape and bureaucracy. Several EU Member States have already put in place regulatory offsetting mechanisms.¹ The President of the European Commission, Ursula von der Leyen, announced the intention to develop an 1in-1out system at EU level.²

The business community welcomes the Commission’s awareness of regulatory costs and burdens, and of the necessity for reduction. That said, 1in-1out should not be a stand-alone instrument but a complementary tool alongside the existing EU better regulation tools including impact assessments, public consultations, ex-post evaluations and regulatory scrutiny and oversight. Proper implementation of the principle of proportionality remains of paramount importance when new legislation is introduced. 1in-1out must not undermine the existing EU system for better regulation nor prevent its further development.

¹ UK (1in-1out 2011; 1in-2out 2015; 1in-3out 2016), France (1in-1out 2013; 1in-2out 2017), Germany (1in-1out 2015), Spain (1in-1out 2013), Finland (1in-1out pilot 2017), Denmark (burden stop on business + burden reduction targets), the Netherlands (e.g. burden reduction programme 2012-2017).

² European Commission (2019): p. 11 - <https://ec.europa.eu/info/sites/info/files/working-methods.pdf>.



Since the EU is a *sui generis* governance system, 1in-1out at EU level implies certain challenges. The following issues ought to be addressed to implement 1in-1out at EU level in an effective way:

- **1in-1out must cover both administrative costs and compliance costs.** Compliance costs are generally the most substantive costs for companies and should be included.³ The Commission should consider all possibilities to reduce burdens, also by making use of all other existing better regulation tools to this end. A common methodology should be established to ensure that the principle is applied in a coherent manner.
- **1in-1out requires commitment and engagement from all EU institutions.**
 - When transposing EU Directives into national law, Member States often go beyond what was agreed at EU level ('gold plating'). This can add significant burden for companies, especially SMEs. Member States should be more transparent and explain and justify the elements that are added to the national transposition measure but are not required by the Directive. Ideally reporting should happen on the basis of a common template.⁴ This would aid the credibility of 1in-1out at EU level and neutralise the risk of the EU bearing the blame for national gold-plating.
 - Currently impact assessments (IAs) are carried out only on the Commission proposal but not on substantive amendments by the legislators during co-decision or trilogues, despite their commitment to do so in the Interinstitutional Agreement on Better Law-making. Existing possibilities for additional impact assessments in the legislative process are underused. In order to apply the 1in-1out system at EU level the updated IA should provide the assessment of envisioned cost of the legislation in the entire EU, possibly triggered by a warning from the Commission to the co-legislators.⁵
 - In order to calculate the costs and burdens that need to be removed, the quality of ex post evaluations ought to be improved. Since costs and burdens would have to be calculated throughout the EU, this requires close cooperation between Member States and the Commission. The starting point should be to remove burdens in the same policy area where new legislation is

³ See OECD (2014): https://read.oecd-ilibrary.org/governance/oecd-regulatory-compliance-cost-assessment-guidance_9789264209657-en#page1.

⁴ See: BusinessEurope (2018): <https://www.besuisseurope.eu/publications/transparent-transposition-besuisseurope-strategy-paper>.

⁵ CEPS (2019): p. 15 - <https://www.ceps.eu/ceps-publications/feasibility-study-introducing-one-in-one-out-in-the-european-commission/>.



introduced, and only if that is not possible, in a different policy area. The Commission also needs to think about how a possible future right of initiative of the EP could be accounted for in the system.

- **Stakeholders must be included.** It is of key importance that stakeholders are involved and consulted on a continuous basis, to build awareness on regulatory cost and burden and to provide input from the ground. For example, the costs that are to be reduced should be those that are considered as most burdensome by stakeholders. The REFIT-platform can be a helpful tool in this regard.
- **Independent oversight must be ensured.** The Regulatory Scrutiny Board (RSB) plays a crucial role in supporting the Commission's drive to ensure that policymaking is transparent and evidence based. The RSB should play an active role in reviewing 1in-1out and validating the estimates of costs and benefits of the regulatory proposals. This involvement would help to strengthen the process and increase credibility.⁶ The RSB or ideally an independent auditor should annually report on the results of 1in-1out throughout the whole EU regulatory process, including on the calculations made in this respect.

Conclusion

Business stands ready to constructively contribute to the discussion on 1in-1out. Regulatory offsetting must be embedded within the wider context of better regulation in the EU and applied in consistency with the other tools. The degree of success of 1in-1out at EU level will depend on ensuring the necessary support by the other EU institutions - the EP and Member States - and professional resources dedicated to it. Notwithstanding their political discretions the EU-legislators need to live up to their responsibility and ensure that the principles of better regulation are applied systematically throughout the entire policy cycle.

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⁶ Both in Germany and the UK, for instance, an independent oversight body is involved in overseeing the process of 1in-1out by verifying the quality of cost estimations provided by the ministries. The involved independent bodies are: in Germany the National Regulatory Control Council (NKR) and in UK the Regulatory Policy Committee (RPC).