



15 July 2021

BETTER REGULATION FOR A MORE RESILIENT EUROPE

A response to the Commission communication

‘Better Regulation: joining forces to make better laws’

KEY MESSAGES

- BusinessEurope welcomes further actions to strengthen and improve the better regulation framework in the EU, presented in the European Commission [communication](#) of 29 April 2021.
- We strongly support the Commission’s renewed call on the European Parliament and the Council to fully implement the Inter-institutional Agreement on Better Law-making.
- Details on practical application of the proposed “1in-1out” principle, however, fall short of business expectations and of the political commitments made by the European Commission both in terms of the timeline and substance as defined; this principle should be further developed and applied without delay. In addition, its success can only be warranted by close cooperation between the Commission, the European Parliament and Member States.
- Cooperation and transparency on transposition of the EU directives at national level to address ‘gold-plating’ are key to maintain the credibility of the 1in-1out principle at the EU level.
- The better regulation principles and tools should remain policy-neutral to guarantee an objective problem definition and real alternative policy options to be considered by the European Commission, the Council and the European Parliament. They should aid in making informed decisions, not merely justifying the preferred political choices.



GENERAL ASSESSMENT

- BusinessEurope has always been among the most vocal supporters of the European Commission's Better Regulation Agenda. Our members have repeatedly called for its continued advancement and thus welcome the Commission Communication 'Better Regulation: joining forces to make better laws' of 29 April as an important step in this regard.
- We welcome various announced proposals which could improve the European better regulation framework, such as increased transparency with a public access to evidence, the link to the EU strategic foresight and the reinforced Regulatory Scrutiny Board mandate. For a comprehensive assessment of potential efficiency gains from these proposals, they need to be put into practice first.
- BusinessEurope considers the 1in-1out principle potentially helpful in limiting the regulatory burdens which stem from the EU legislation. However, BusinessEurope regrets that the Communication lacks ambitious and clear policy objectives to alleviate the growing regulatory burden on businesses, most notably SMEs. The proposed "1in-1out" approach falls short of business expectations and of the political commitments made by the European Commission President. In its current shape and form, the 1in-1out principle will hardly support the post-Covid-19 recovery. Moreover, a joint effort and coordination between the European Commission and Member States are essential for its success.
- In its [Annual report 2020](#), the Regulatory Scrutiny Board (RSB) notes that a significant number of impact assessments support preferred political choices and outcomes rather than serve as an objective aid to consider various real alternative policy options and make informed political decisions. BusinessEurope shares the RSB concerns and considers that the Commission Communication does not address this trend. We find it very important that the policy neutrality of the better regulation tools is ensured by always assessing environmental, economic and social impacts on an equal footing. Political preferences should not pre-determine results of such assessments.
- The Communication does not explain how better regulation will support businesses to recover from the Covid-19-induced economic fallout.



COMMENTS

I. Comments on the relationship between better regulation and the green and digital recovery

- BusinessEurope welcomes that the European Commission's better regulation system "systematically assesses the economic, social and environmental impacts of policy action". We consider that this has enabled the Commission to improve the quality of proposed legislation. To date, the better regulation system has maintained a balanced and policy-neutral approach to the three mentioned pillars of impacts. This is the best and democratically most legitimate approach in order to make decisions based on the right cost-benefit ratio. Costs and benefits should always be assessed on an equal footing.
- In this regard, BusinessEurope is concerned about the Commission's announcement to "mainstream" green and digital policy objectives in better regulation. Whereas we fully acknowledge the importance of those objectives, we worry that such an approach may fundamentally change the principles of better regulation and jeopardise the balanced approach to impact assessment mentioned above. It is of utmost importance that the principles and tools of better regulation remain policy-neutral. Relevant impacts must not be ranked according to political preferences but always be assessed in an objective manner.
- BusinessEurope encourages the Commission to integrate regulatory sandboxes as part of the better regulation toolbox. We would welcome a European network on regulatory sandboxes and implementation of selected pilot projects.

II. Ownership of the better regulation system in the EU

- BusinessEurope strongly supports the European Commission's renewed call on the European Parliament and the Council to fully implement the Inter-institutional Agreement on Better Law-making. Most importantly, the legislators should deliver on their commitment to conduct their own impact assessments on substantive amendments they introduce to the Commission proposals.
- Given that the Commission proposals are often amended during the trilogue negotiations without respective impact assessments of such amendments before adoption, we call on the EU institutions to find a *modus operandi* to ensure that the final legislative proposal does not create unnecessary regulatory costs and burdens for businesses.



- BusinessEurope agrees that the effects of their amendments to the Commission proposals in terms of anticipated impacts should be documented by the legislators in the evidence register. Such a documentation of impacts of substantive amendments should uphold the impact assessment quality standards established by the Commission.
- BusinessEurope supports the idea of making greater use of Member States' feedback on the practical impact of legislation in evaluations and during revisions of existing legislation if such feedback can be adequately compared. However, BusinessEurope considers that this would require a great deal of resources and consensus among Member States which does not seem achievable in the short run.

III. Transparency and dialogue with stakeholders and the general public

- A single 'call for evidence' and a "once-only consultation" on *Have Your Say* web portal may streamline the European Commission's reach-out to the public. However, we underline that different stages in the process require different preparation of the participating actors. Combining the feedback periods on roadmaps/inception impact assessments with public consultations risks compromising the quality of the latter. Therefore, a possibility to contribute at different stages of the initiative in question is valuable.
- BusinessEurope has been voicing concerns in relation to the quality and objectivity of public consultation questionnaires already, therefore we consider improvements in the structure, content and language of questionnaires of public consultations as priority. BusinessEurope's [recommendations](#) on public stakeholder consultations of 17 July 2018 remain valid. Such issues as the questionnaires that are designed to justify policy preferences rather than collect evidence, or the application of clear criteria to weigh the contributions in terms of their representativeness should be addressed.
- BusinessEurope supports the suggestion to establish a "common evidence register" of the Commission, the Council and the EP, accessible to all for the checks on evidence underpinning the initiative in question. It could be an additional push for a responsible, inclusive and evidence-based decision making.
- BusinessEurope supports the Commission's approach to public consultations on "very technical issues", allowing for targeted consultations in such instances instead. However, to be efficient and transparent, it needs better justification and clear criteria.



- First, there is no criteria established for a definition of what “very technical” actually means. BusinessEurope understands the need to have effective processes which bring real value added in consultations, therefore clear criteria are needed.
 - The concept of targeted consultations also leaves too much room for the Commission’s discretion. Clear and transparent criteria are necessary to avoid prejudiced choices and/or higher interference by purely vested interests.
 - In addition, BusinessEurope considers that a recent trend to often address certain aspects of proposals by the delegation of powers (through delegated or implementing acts) is not always justifiable or transparent enough; the transparency and consultation requirements for delegated or implementing acts are lower which weakens the considerations in terms of impacts of the delegated decisions.
- We support the Commission’s intentions to notify new developments with respect of each initiative. However, the Commission refers to “the publication of the Commission’s proposal, the adoption of the final legislation following negotiations between the European Parliament and the Council and the Commission” which are nothing but the present practice, just executed by different respective players (decision makers) in the EU decision-making process. BusinessEurope reiterates its call that transparency on new developments around each initiative should also cover interim steps before the agreement is completed, notably agendas and major points discussed in trilogues.

IV. Simplification and burden reduction

1in-1out principle

- As stated in our [position paper](#) on “1in-1out at EU level” of 24 January 2020, BusinessEurope supports the introduction of this principle by the European Commission to better manage regulatory costs and burdens stemming from new legislation. We believe that “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.” However, we are disappointed by the Commission’s proposal in its current form.



- We regret that the Commission will only pilot the 1in-1out approach in the second half of 2021, with a plan to launch its full implementation in 2022. It is a significant delay to the second half of this Commission's mandate, which could have been avoided, had the Commission presented the Communication as originally foreseen. As a result, the 1in-1out principle will not be applied to the major policy initiatives with far-reaching impacts on the economy before 2022. The economic recovery requires that the Commission limits new burdens on businesses to the absolute minimum necessary and applies the "1in-1out" principle to all policy initiatives immediately.
- BusinessEurope agrees that offsetting of burdens should not be done in a mechanical manner. This is why the Commission should not automatically consider the replacement of 27 national frameworks by an EU regulation as "efficiency gain" and thus as "out". Moreover, the EU should not necessarily harmonise all requirements, and the non-harmonised requirements should be applied under strict enforcement of the mutual recognition (or country-of-origin) principle.
- We reiterate the necessity to address transparency on transposition of the EU directives at national level, as Member States often go beyond what is required by the EU law ('gold-plating'). BusinessEurope's [recommendations on transparent transposition](#) remain fully valid and would also aid the credibility of the 1in-1out principle at the EU level, by a clear identification of the burdens which are added through 'gold-plating'.
- BusinessEurope supports the Commission's commitment to assess full compliance costs (i.e. administrative costs + adjustment costs to comply with legislation) and make these assessments public in the impact assessment. This can contribute to awareness raising on regulatory burdens in the Commission services and for the legislators.
- However, we regret that when applying the 1in-1out principle only the administrative costs will be offset, while the adjustment costs will be offset only "when possible" and by other instruments. This renders the 1in-1out principle only half-operational and jeopardises its credibility.
- In the mid-term, the Commission should have a clear goal and advance on the 1in-1out principle to ultimately cover the offsetting of all adjustment costs. In the meantime, impact assessments should already present possible options to the Commission, the Council and the European Parliament how to compensate the new costs through the "other instruments" referred to in the Communication.
- BusinessEurope understands the necessity to have certain flexibility in the system. However, exemptions from or flexibilities in the 1in-1out principle



application should not be a “carte blanche” in terms of discretion granted to the Commission.

- BusinessEurope has the following comments on the proposed arrangements:
 - flexibility within the reporting period: if an ‘out’ cannot be identified in the same year’s work programme, it could be reported in the next year and with a delay of 1 year maximum to maintain credibility; however, the pending ‘outs’ should not be left to the successive Commission that might have completely different views in terms of areas for burden offsetting.
 - ‘trading’ in certain exceptional circumstances across policy areas: the Commission should clearly spell-out the conditions that would allow for such trading, and in any instance the starting point should be to remove burdens in the same policy area where new legislation is introduced. The RSB should assess the validity of justification of the intended trading to ensure that burden reliefs in the other policy area benefit the same companies that bear the newly introduced burdens.
 - exemptions in certain exceptional circumstances: as presently formulated in the Communication, the exemption is very broad and giving too much of discretion to the Commission, therefore it should be clarified under which specific conditions the Commission will consider exemptions as well as what constitutes “exceptional circumstances”. It is also necessary for better predictability of the regulatory environment.
- BusinessEurope invites the Commission to promote the 1in-1out principle in the European legislation to Member States and ensure its application across all the Commission services. The Commission should seek the cooperation of Member States in order to prevent fragmentation of the European regulatory framework, resulting from selective application of the principle by the Member States during the transposition process concerned.

Fit-for-Future Platform (F4F)

- BusinessEurope considers that submissions by stakeholders must continue to shape the annual work programme of the F4F Platform as they did in the preceding REFIT Platform, even if those submissions are not covered by a respective Commission Work Program. The top-down and bottom-up approaches should be in good balance for the Platform to maintain its legitimacy as stakeholder-driven forum.



- Stakeholders making submissions to the F4F Platform should get feedback on the progress and be informed about the outcome related to their submissions.

V. Improving evaluations and impact assessments

- The European Commission intends to make its Strategic Foresight Report an integral part of the annual better regulation agenda, which BusinessEurope supports in principle. There is a need for more details on how this will be done in practice, in order to assess potential benefits of such integration. BusinessEurope underlines that the Commission should focus on effectiveness of available better regulation tools and maintain their policy neutrality.
- Streamlining of evaluations is a welcome step and the Commission should put more effort to ensure that evaluations are carried out in a transparent and independent manner. Once the methodology is available, the 1in-1out principle considerations should be strongly embedded in evaluations.
- BusinessEurope strongly supports a reinforced role of the Regulatory Scrutiny Board (RSB), giving it powers on the 1in-1out principle application scrutiny and independent outreach activities. The RSB mandate should be extended to cover instances of failure to present an impact assessment with the legislative proposal. Moreover, BusinessEurope considers that the RSB administrative capacity should be strengthened in order for the independent regulatory oversight to match the new challenges.