

The Consumer Voice in Europe

BETTER REGULATION - MAXIMISING THE NET BENEFIT OF LEGISLATION FOR SOCIETY AS A WHOLE

BEUC's reaction to the European Commission's 2021
Communication



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Why it matters to consumers

Europe's consumers need effective, enforceable regulation at EU level that protects and promotes their interests, now and in the future. To put such rules in place, the European Commission must follow efficient, open and transparent procedures. The Commission's Better Regulation Agenda needs to put more emphasis on the benefits of EU legislation and the efficiency of EU legislation in achieving its legislative objectives and less focus on "simplification" for its own sake.

1. General considerations

In recent years, the European Commission's Better Regulation Agenda has improved the transparency of the decision-making process. Regrettably, however, simplification and reducing the regulatory burden seems still to be the core of the Better Regulation Agenda. The latest Communication on Better Regulation¹ includes some positive elements but also introduces new problematic issues like the "one in, one out" principle.

We welcome that the Communication explicitly mentions a need "to raise awareness of benefits of legislation" but regret that this is not reflected in the approach subsequently outlined in the document. Below we address some key elements of the Communication from a consumer perspective:

1.1. Improving the benefits of legislation must be at the core of Better Regulation

EU legislation is essential to attain the objectives of the EU Treaties, which include promoting the wellbeing of people through its policies including consumer protection, sustainability and a well-functioning economy based on the Single Market.

Opening markets for business, giving them legal certainty and trust in fair competition, must be balanced and be equally based on the need to provide the necessary protection, information and redress tools to consumers. Better transparency of EU decision making, another focus of the Better Regulation Agenda, is essential for generating and maintaining people's trust in our democracies.

The focus of Better Regulation should move away from the *reduction* of costs and the *burden* of regulation approach. Whilst everybody agrees that unnecessary administrative burdens through EU legislation should be reduced or altogether avoided, the shift of the institutional discourse from an "administrative" to a "regulatory" burden has been problematic. **The Better Regulation concept should focus on evaluating if EU regulation is effectively able to respect and promote the fundamental values, principles, and objectives of the EU.**

¹ European Commission, '[Better regulation - joining forces to make better laws](#)', 2021.

1.2. The “one in, one out” approach has no added value

With establishing the “one in, one out” principle for EU legislation, the Commission wants to “offset new burdens from new regulation by equivalently reducing existing burdens in the same policy area”. The Communication does not explain the concrete methodology of how this would be done.

Legislation, and the need for it, should be based on its own merits and objectives, and not depend on a trade-off with some other legislation. Therefore, BEUC disapproves of this principle and regrets that after many years of discussion and previous conclusions that such a principle has no added value but can rather become threat to well-established legislation and protection, the Commission now nevertheless introduces it.

Our member Arbeiterkammer (Austria) demonstrated in a study² how the focus of the “one in, one out” principle on equalising or lowering the cost burden of companies overlooks the fundamental justification for any legal regulation in a democracy which is maximising the net benefit for society as a whole. **Governmental (and supranational) regulations do not have the primary goal of creating costs, but rather to serve the common good and to initiate or realise improvements in the social, ecological and economic spheres.** Regrettably, the Communication omits any awareness of this fundamental principle of law making.

Finally, the costs of regulation need to be assessed also against the costs of not regulating, with a particular attention to externalities. For example, reducing CO2 emission targets has a cost for the car industry, but it needs to be weighed against the benefits, also in financial terms, of cleaner air, a cleaner environment, reduced public health expenditure and a more resilient economy.

If cost assessments are to be done under this new approach, they must be undertaken on **a case-by-case basis** and submitted to a detailed and evidence-based overall evaluation of the objective and impact of legislation. The concept of reducing costs of regulation *must always depend on* a detailed assessment of why the respective regulation and its requirements have been put in place (or why they would be put in place), how they achieve the legislative objective and whether this could be done more efficiently and effectively.

The announced flexibility and an assessment of the fulfilment of *all* legislative objectives of a particular piece of legislation, including protections which cannot be measured easily in economic terms, will be critical. The Commission’s respect for its commitment that the “one in, one out” approach will by no means lead to a lowering of the EU’s high economic, social and environmental standards and objectives, nor prevent the adoption of new initiatives with clear added value effectively pursuing policy priorities, is essential.

BEUC will closely monitor whether the introduction of the “one in one out” principle will lead to a freeze with regard to regulatory activity in areas like safety, health and consumer protection, which are typically most at risk of being impacted by this approach.

1.3. The Fit for Future (F4F) platform’s room for improvement

We welcome that compared to the previous REFIT platform, the F4F platform has a slightly expanded mandate and can also support the Commission to ensure that Union policies are forward-looking and relevant in light of new challenges not only on how to achieve simplification or reduction of burdens. In overall terms, and for the future development of the concept of better regulation, there should be more focus on the benefits and efficiency of EU legislation in achieving its objectives, rather than the ‘simplification’ aspects as stressed in the previous platform’s mandate.

² Accessible at <https://emedien.arbeiterkammer.at/viewer/ppnresolver?id=AC16050841>

The primary objective of the platform should be to look at how the objectives of the EU legislation under discussion can be fulfilled better and, if necessary, what improvements can be made to deliver results for people. In addition, “Fit for Future” must be understood in a broad sense, following the European Commission’s objective to mainstream the Sustainable Development Goals across policy areas. It would be important for the F4F platform to assist the Commission in that regard, either as an additional work area or under each of the areas of the work programme.

1.4. A simpler, more predictable policymaking process

In recent years, the European Commission created several new opportunities for stakeholders to express their views. Whilst this was welcome in principle, the sometimes very short deadlines and partial overlap of consultation periods was difficult to manage for stakeholders.

We understand from the Communication (p. 5), that in future the European Commission intends to provide 12 weeks for feedback consultations (roadmaps/inception impact assessments) as these will be launched and run in parallel to the open public consultations as part of a single “call for evidence”. While we support a simplification of the consultation process, **it is however questionable whether one single public consultation, will be enough to ensure that input can be provided by the right stakeholders, at the right time and on the right questions.** The Commission should provide detailed guidance to its services how such a call for evidence must be organised.

To increase transparency, we further recommend that **the Commission should publish summaries of the feedback received on roadmaps/inception impact assessments and explain how comments have been taken into account in the design of evaluations/fitness checks and impact assessments.** Currently no information is provided about how stakeholder feedback on e.g. problem definition, policy options, or the planned consultation strategy was used to shape the initiative.

Targeted consultations of affected stakeholders must be timely, regularly undertaken and be based on a well-informed stakeholder mapping, which must be published. The Commission must aim at balanced input from all affected parties and put mechanisms in place to ensure that industry input is not the predominant evidence which the Commission receives.

Impact assessments must proceed from a solid identification and analysis of the state of play of EU legislation. In this context, the trend towards integrating evaluations and impact assessments appears problematic as it implies that the Commission launches legal revisions without a clear problem identification/analysis (is the legislation fit for purpose?): **this conflicts with the “evaluate first” principle.** Further, such back-to-back evaluations/impact assessments make it impossible for stakeholders to assess the validity of the problems the Commission intends to address – as there is no existing evaluation – and the presented options for addressing them are typically not informative (roadmaps frequently merely state that options will be explored in the subsequent impact assessment). This makes it difficult for stakeholders to provide feedback and to gauge the chances that might follow from these initiatives.

1.5. The Regulatory Scrutiny Board

In the context of transparency, the work of the Regulatory Scrutiny Board – an independent body advising the College of Commissioners – finally needs further improvement. For example, the RSB should publish a list of items foreseen for discussion ahead of its meetings (similar to the College). Currently, although the RSB is an increasingly important gatekeeper in the internal Commission decision-making process – and the preparatory process in general – stakeholders can only know when impact assessments/evaluations are submitted to the RSB through informal contacts with Commission services. Such a lack of transparency is problematic.

1.6. Public consultations must be better designed

We strongly welcome that the Commission wants to improve the way in which many consultation questionnaires are drafted, as currently they are often too complicated, long and technical. In addition, the way the Commission measures the effectiveness of EU legislation is currently often unbalanced. For example, with regard to the achievement of legislative objectives, the Commission looks mainly at ways to achieve burden reduction. Still **too often consultations are not drafted with consumer organisations or civil society in mind**: either they ask questions that are only relevant to businesses (e.g., about costs) or questions about individual citizens' experiences.

In this context, we underline that consultation of interest representatives and individual citizens should be separated, not merged. We also recall that the REFIT platform, in its opinion on public consultations,³ recommended to do so.

1.7. Digital by default is not always better

Many citizens and consumers are still not digitally equipped and/or skilled. **Where a risk of exclusion and discrimination exists, digitalisation needs to remain optional**. In addition, we underline that digital is not better *per se*. Traditional means of communication should only be replaced with digital means where certain conditions are met (e.g., right to human intervention, right to overrule, strict privacy conditions, etc.). These considerations should be a priority each time a move to digitalisation is planned.

The focus should be on ensuring that digital solutions benefit all EU citizens (as not everyone has a smartphone, the necessary skills, etc.), including guaranteeing an offline alternative to those citizens that do not wish to use digital solutions in the first place. Also, **digitalisation is not a silver bullet, as e.g., digitalisation is energy intensive, may increase cyber vulnerabilities, etc.** While the European Green Deal identifies digital technologies as a critical enabler for attaining the sustainability goals, it at the same time also insists that Europe needs a digital sector that puts sustainability at its heart. Thus, the Commission should keep these trade-offs in mind when considering the burden reduction potential of digital technologies. Digitalisation comes with a price for other policy objectives.

In the context of ideas about digitalisation of mandatory consumer information, any discussion about **digital consumer information** and **labelling** needs first and foremost to consider the needs and interests of the intended recipients of that information. For product labelling, for example, consumers' needs about how to receive and make use of the information must come first. While digital information tools have undeniable potential to improve both the availability of product information and the capacity to effectively reach consumers, they also entail major challenges – and risks – for consumers' access to essential information.

³ REFIT Platform, [Opinion on the submissions XXII.4.a by the DIHK and XXII.4.b by a citizen on Stakeholder consultation mechanisms](#), 2017.

Therefore, they must not replace established means of communicating product information to consumers, such as on-pack labels or paper leaflets.⁴

1.8. Future-proof laws to benefit all consumers

Under the new Better Regulation Agenda, the [European Commission](#) is committed to promoting a forward-looking policymaking culture, including by mainstreaming 'Strategic Foresight' in all fields, to anticipate developments and thus improve the futureproofing of law making. While designing 'future-oriented' policies is a key lesson of the pandemic, the primary objective of Strategic Foresight should be to look at how the long-term objectives of EU legislation can be fulfilled and how to make necessary improvements for people.

In this context we strongly welcome that the mission letters of all Commissioners mention that each Commissioner must ensure the delivery of the United Nations' Sustainable Development Goals within their policy area and that the College as a whole will be responsible for the overall implementation of the UN Goals.

To achieve a people-centric and a consumer-oriented approach in the relevant policy areas, **close integration between the Consumer Agenda and the mainstreaming of Strategic Foresight into EU policymaking will be needed.** In particular, Strategic Foresight – and the broader Better Regulation Agenda – **must emphasise a focus on strengthening the benefits and the efficiency of EU policies for all stakeholders,** in particular those who need to be protected and empowered via regulation.

In overall terms, and for the future development of the concept of Strategic Foresight and Better Regulation, the Commission must put more focus on the benefits of EU legislation in achieving its legislative objectives, rather than on the 'simplification' aspects that have been the main focus in the past.

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⁴ BEUC, [Why moving essential product information online is a no go](#), 2021.



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