



# **Better Regulation: Joining forces to make better EU laws and to prepare for the future**

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# Executive summary

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The Commission is planning a raft of measures to simplify regulation at the European level and to make it more efficient. The Austrian Chamber of Labour (AK) is critical of the communication: In AK's view, the Commission's communication, while containing some positive approaches, also sets out a number of ideas that are firmly rejected by AK. The most important positions from AK at a glance:

- The fresh announcement that “obstacles and red tape”, i.e., bureaucracy, should be eliminated recalls the REFIT initiatives of the last EU legislative periods. Intended cost savings for companies to the detriment of social policy standards should be rejected decisively. The anti-red-tape initiative recalls the anti-gold-plating plans of the Austrian Federal Government in 2018, which called into question any national laws with standards higher than under EU law. AK firmly rejects such concepts because of the threat to social standards that the implementation of the said plans entails.
- Public consultations play an important role in the legislative process and should certainly be retained. AK agrees that having multiple consultations on the same topic is not sensible and entails unnecessary additional effort and expense. We also welcome the simplification and shortening of questionnaires.
- Better regulation includes full transparency about whom the three law-making EU institutions have meetings with. In AK's view, the Council still has work to do here. The Council representatives of all Member States should disclose their meetings with lobbyists. In the case of expert committees, the European Commission should ensure the balanced composition of the expert groups.
- AK firmly rejects a ‘one in, one out’ principle, under which a new burden (or new law) is to be offset by removing an existing burden in the same policy area. The risk is that, despite the Commission's insistence to the contrary, standards of social

importance, such as for example ones concerning worker protection or consumer rights, will be jeopardised or that progress will be blocked or rendered impossible in important social policy fields. [A study](#) commissioned by AK also comes to that conclusion.

- AK welcomes both strategic foresight to detect mega-trends and challenges early as well as impact assessments that demonstrate why new legislative proposals are necessary. The Commission should, however, explain how the ‘one in, one out’ principle is compatible with that initiative.

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# The AK's position

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The European Union currently faces massive challenges, including of a regulatory nature. That includes tackling the Coronavirus pandemic, the climate crisis, growing social inequality, and progressive technological change. There can be no doubt, for example, that increasing digitalisation, which has led to phenomena such as platform workers without rights, requires a number of targeted measures. That is one of the reasons why **efficient and progressive regulation is essential**. EU legislation needs to be even better and of higher quality to fulfil the goal of social progress and improved environmental protection defined in Article 3 of the Treaty on European Union. It is therefore important that the interests of all stakeholders, especially of employees and consumers, are given equal consideration, as AK has repeatedly emphasised [in its position papers](#) on better regulation in recent years.

Based on experiences during the recent legislative terms and measures at the national level, AK is therefore critical of the fresh announcement that “obstacles and red tape or bureaucracy that slow down investments and the building of 21st century infrastructure should be eliminated”. Every Member State has the right to ensure an improvement in the quality of life of the population by going beyond the minimum standards set out in the directives. The anti-gold-plating initiative of the Austrian Federal Government in 2018 shows the direction that plans concerning elimination of “red tape” can take. At the request of the Austrian Federal Ministry of Justice, representatives of the Austrian business sector presented a list of regulations that in their view should be called into question due to exceeding the minimum level of protection required under EU law. [Among the regulations questioned](#) were those concerning overtime premiums, protection against dismissal for pregnant women, shortening of annual leave from five or six to four weeks, worsening of consumer contracts, and passenger rights. After the confidential list came to light, the Austrian Federal Ministry of Justice distanced itself from such proposals. The debate shows, however, how quickly quality-of-life standards can be threatened by an anti-red-tape

or anti-gold-plating discussion. AK therefore firmly rejects such notions and calls for an end to the anti-red-tape discussion, which is to the detriment of the population.

AK welcomes efficient EU laws, but the planned measures must be aimed at serving the common good and at improvements in the social, environmental, and economic fields. The focus on certain interest groups, such as SMEs, frequently overshadows the economic effects of such a principle on the public and is therefore decisively rejected by AK. However, the fundamental pledge to involve social partners in the work on better regulation is welcomed.

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## Stakeholder communication and transparency

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The inclusion of the public in the legislative process in the form of consultations is important and should not be seen as involving unnecessary effort and expense. On the contrary: a lack of surveys can result in important content-related aspects being overlooked and result in unnecessary burdens later. AK, however, shares the Commission's view that having multiple consultations on the same initiative generally only results in unnecessary additional effort and expense for all stakeholders. It is also true that the questionnaires are often too long and too technical in structure. AK therefore welcomes simplification of the structure and content of consultations.

It is also positive that the Commission emphasises the need for greater transparency. It is a step in the right direction if the relevant registers and portals, such as the EU Publications, EUR-Lex and Have Your Say, are improved and internal and scholarly databases are made publicly accessible.

However, AK wishes to note here that the transparency involved in better regulation also includes the role of lobbying in the legislative process. While the Commission and the Parliament have already taken

important measures for greater transparency and have, at least partially, made information public about meetings with lobbyists, the situation at the Council level remains highly unsatisfactory and there is a lack of transparency about with whom Council representatives from the Member States meet. AK therefore calls on the Council to be more open about with whom it meets. AK expects the Commission to ensure the balanced composition of the expert committees, which play a highly important part in the legislative process but are unfortunately still strongly dominated by the business sector.

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## 'One in, one out' principle

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As mentioned at the start of this position paper, in AK's view, the aim should be for the common good to be the focus of the better regulation initiative. Focusing on a given interest group, such as the SMEs highlighted during the REFIT programme, carries the risk that advantages for certain groups entail disadvantages or costs for all other actors in the economy. New protective measures for handling nanomaterials, for example, may impose costs on companies but prevent costs both for business and society caused by employees falling ill. That benefit may be significantly higher in the medium term than the associated costs in the short term.

Based on the experiences of REFIT, AK was alarmed when it learned of the Commission's plans to introduce a 'one in, one out' principle and commissioned a study on that new principle. The results of the study led by Univ. Prof. Dr. Franz Leidenmühler from the Johannes Kepler University Linz are abundantly clear:

According to the study, the focus of the 'one in, one out' principle is on keeping the cost burden on companies, especially SMEs, at the same level or lowering it, while overlooking the fundamental justification for all legal regulation in democratically run societies, namely maximisation of the net benefit for society as a whole. There is also no scholarly basis for taking the existing sectoral regulatory level as the "perfect" baseline.

According to the study, the initiative also carries the risk that provisions that serve social aims, such as worker protection, environmental protection, or consumer protection, will only be studied with respect to the resulting cost burden for (small and medium-sized) companies and will ultimately only be viewed as business cost factors. The legislator, who is obliged to serve the common good, thereby unnecessarily puts

himself in the position of needing to justify his actions to companies unilaterally.

Even if the standard of protection is not lowered, a future increase in the standard of protection cannot be expected, according to the authors of the study. However, according to the study, that is incompatible with the requirements under primary law to aim for a higher level of protection in the Member States in the field of social policy in general and worker protection in particular. A 'one in, one out' principle applied in that manner would therefore even be in violation of the EU treaties.

AK subsequently sent the study to the Commission and asked it to take those fundamental concerns into consideration as a matter of urgency.

Compared to the original plans, the Commission has watered down the 'one in, one out' principle considerably. That means new legislation is possible without removing other "burdens", if there is political support for that. Initially it was planned that, for any new legislation that represents a burden, burdens must be removed to the equivalent extent in the same policy area. Now, however, the legislation to be removed no longer needs to be strictly in the same policy area. If no legislation can be identified that can be removed, it is also possible for relevant measures to be taken in the subsequent year.

It is a welcomed and positive step that the Commission is now responding to expert criticism, including the criticism made by AK. Unfortunately, however, the risk remains that important legislation may be removed or not put forward in order to satisfy the 'one in, one out' principle.

AK therefore urges that this principle be abandoned since it has no discernible added benefits. Instead, there is cause for concern that civil society may lose rights, while the creation of higher standards of protection could be blocked. In AK's view, the regular review and assessment of the effectiveness and quality of existing legislation in relation to social goals should clearly be prioritised.

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## Other new instruments

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AK welcomes the efforts to increase participation in public consultations at the European level. However, it should also be emphasised that, compared to the opinions of individuals, particular importance should be attached to positions taken by institutionalised interest groups, such as trade unions and other

worker representative bodies or consumer protection organisations with hundreds of thousands or even several million members. The same applies to the European Economic and Social Committee (EESC) and the European Committee of the Regions, which represent large sections of the population and many companies.

The Commission wishes to work even more closely with the Parliament and the Council. The three institutions have regularly exchanged views up to now, which is to be welcomed. However, AK wishes to emphasise the importance of the independence of the EU institutions with respect to regulation in the scope of the Treaty on European Union. Initiatives such as the focus on reducing costs for specific interest groups are incompatible with fundamental democratic principles and should therefore be firmly rejected.

Strategic foresight should naturally always play a role in European policy-making. That enables mega-trends and challenges, such as those arising in connection with the climate crisis and social and employment policy, to be detected earlier and supported accordingly in the regulation process. However, that is somewhat at odds with the 'one in, one out' principle, which could hinder or block measures to tackle new challenges due to the associated costs for companies.

AK supports more extensive impact assessments. They make it possible to demonstrate why legislative measures are necessary and to the benefit of society. Here too, it is important to note that there should be a **general paradigm shift away from focusing on SMEs and companies towards focusing on society and the common good**. Unless that occurs, it will not be possible to tackle the challenges outlined above, which are of vital importance with respect to many issues and not only the climate crisis. The European Union does indeed need better regulation to that end.



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## About us

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The Austrian Federal Chamber of Labour (AK) is by law representing the interests of about 3.8 million employees and consumers in Austria. It acts for the interests of its members in fields of social-, educational-, economical-, and consumer issues both on the national and on the EU-level in Brussels. Furthermore, the Austrian Federal Chamber of Labour is a part of the Austrian social partnership. The Austrian Federal Chamber of Labour is registered at the EU Transparency Register under the number 23869471911-54.

The main objectives of the 1991 established AK EUROPA Office in Brussels are the representation of AK vis-à-vis the European Institutions and interest groups, the monitoring of EU policies and to transfer relevant information from Brussels to Austria, as well as to lobby the in Austria developed expertise and positions of the Austrian Federal Chamber of Labour in Brussels.