



“One In, One Out” in EU Legislation: More Risks than Opportunities

Key Points

- According to the one-in, one-out principle, new legislative burdens are only allowed to be introduced to the extent to which previous burdens are removed. That principle has been pursued in a number of EU Member States in the form of a deregulation concept for some time now. At individual Member State level, it can be seen that the majority of Member States have focused on the business sector when applying the one-in, one-out principle, i.e. on reducing the administrative burdens for businesses, rather than focusing on citizens or the broader economic perspective.
- In 2021, the Commission announced that it would develop a new instrument to eliminate the “unnecessary regulatory burden”, according to which new administrative burdens are only to be introduced if, at the same time, both people and enterprises, in particular SMEs, are relieved of equivalent administrative costs at the EU level in the same policy area.
- That focus of the one-in, one-out principle on stabilising or lowering the cost burden for businesses overlooks the fundamental justification for all legislation in democratic communities, namely maximisation of the net benefit for society as a whole. The primary aim of state (and supranational) legislation is not to generate costs, but to serve the public good and to achieve improvements in the social, environmental and economic fields.
- In both the legislative process at EU level and the implementation process at Member State level, the rigid focus on the compliance burden for businesses leads to the fact that rules that aim to benefit society as a whole, such as protection of workers, the environment and consumers, are only analysed with regard to the resulting cost burden for enterprises and are merely viewed as business cost factors.

Background

After repeated announcements and delays, the Commission presented its Communication titled “Better Regulation: Joining forces to make better laws” on 29 April 2021 (European Commission 2021). The commitment to the “one-in, one-out” principle is central to it. Accordingly, for each new legislative initiative, existing burdens in the policy field concerned are to be removed to the same degree.

Experiences of the one-in, one-out principle at the Member State level show that the main focus has always been on reducing the administrative burdens on business, rather than on relieving the burden on citizens or even a broader economic perspective. That risk of a tendency towards a unilateral focus on the cost burden for businesses also applies to the European version of the one-in, one-out principle. Ultimately, the principle is part of the Commission’s “Better Regulation Agenda”, which, for some years now, has been calling for legislation to be streamlined to relieve the burden, particularly on SMEs.

The EU legislator, who is committed to the public good, thereby unnecessarily submits itself to a unilateral requirement to justify itself to enterprises and thereby places “business” above citizens.

In a study for the Vienna Chamber of Labour (AK Wien), the author formulates numerous criticisms of the introduction of the one-in, one-out principle at the European level (Leidenmühler 2020, 39-51). Above all, the sole focus of the one-in, one-out principle on stabilising or lowering the cost burden for businesses overlooks the fundamental justification for all legislation in democratic communities, namely maximisation of the net benefit for society as a whole. The risks of rigidly pursuing the one-in, one-out principle are described below.

Main Findings

The one-in, one-out principle is not an invention of the Commission under President Ursula von der Leyen. The principle was applied in most European Member States in the past, with varying degrees of success, in the form of a deregulation concept. Some countries (such as Denmark and the UK) abandoned the concept relatively quickly, while it was never practically implemented in others, despite being enshrined in law (for example in Austria).

In any case, it can be seen at the level of the individual Member States that the one-in, one-out principle has been applied in almost all countries with the **focus on reducing the administrative burden on businesses**, rather than on the interests of individuals and the wider economic perspective. A common criticism of the one-in, one-out principle is that introducing it serves to entrench the current level of burden (from the perspective of businesses) as being socially optimal and to keep the degree of regulation and the burden of implementation at a constant level. Accordingly, no distinction is made between superfluous bureaucracy and meaningful rules. However, this can result in existing legislation that is useful in economic, environmental or social terms being abolished or in “burdens” being shifted to citizens in order to keep the burden constant for businesses.

Despite these concerns, the one-in, one-out principle has long been propagated at the level of the European institutions as a concept for easing the burden on business. Above all, the so-called Stoiber Group deployed by the Commission in the course of implementation of the Action Programme for Reducing Administrative Burdens in the European Union (2007) has consistently called for less legislation to be generated at the EU level (Alemanno 2015, 345-352).

The Commission under President Juncker (2014-2019) was highly sceptical of the one-in, one-out model. In its Communication titled “Completing the Better Regulation Agenda: Better solutions for better results” of 24 October 2017, the Commission states that in its opinion rigid deregulation targets like the one-in, one-out principle are a misguided approach. The Commission voices its concern “*that such an approach would create deregulatory pressures and impair its political responsibility to deliver what needs to be done when it needs to be done*” (European Commission 2017, 10). Accordingly, such a rule would either limit the political room for manoeuvre or would jeopardise social and environmental standards if rigidly implemented. A quote from Frans Timmermans, former Vice-President of the Commission who is responsible

for “Better Regulation”, from April 2019, is indicative of the Commission’s original scepticism: “*Quantitative targets for reducing regulation [...] are like criticising Mozart for having too many notes – which ones would you like to remove?*” (Timmermans 2019).

However, this all seems to have been forgotten since President Ursula von der Leyen took office at the Commission. Not only is the Commission aiming for introduction of a one-in, one-out principle, but it has also decided to place the focus on the cost burden for businesses (and hence on the interests of businesses) when applying that principle. Given the above, standards relating to protection of workers, consumers, and the environment, which businesses tend to view as a bureaucratic burden and predominantly a cost factor, are subject to massive pressure.

Maroš Šefčovič, Commission Vice-President for Interinstitutional Relations and Foresight, has himself emphasised that **reduction of the burden on businesses** will once again be the **focus of deregulation**: “Simplification and burden reduction, especially for SMEs, is particularly needed in the aftermath of the COVID-19 pandemic. We must explore how digitalisation can help achieve it, while ensuring that our legislation remains forward-looking and fit to tackle the new challenges.” („Commission launches the Fit for Future Platform and invites experts to join”, Press release 11.05.2020).

Such fears are reinforced by the Commission’s announcement to apply the one-in, one-out principle on a sector-by-sector basis. If, for example, a new regulation is introduced to protect workers’ interests (meaning a potential “burden” for the economy as a possible cost factor), the principle of compensation means that an equivalent burden must be removed in the same field (formally, by removing a regulation and, materially, by removing a relevant “burden”).

Furthermore, the one-in, one-out principle fails to take into account the **knock-on effects on the wider economy** in the form of a comprehensive cost-benefit analysis. Key aspects of a given piece of legislation, such as the impact on public health or the environmental benefit or effects on other industries or along the value chain, are disregarded. That can be illustrated by a **fictitious** example: due to the COVID-19 situation, a new law is passed that requires special protection and prevention measures to be taken for workers in factories. That costs the given industry EUR 10 million to implement. If the one-in, one-out principle is applied, legislation would have to be eliminated (possibly in the same policy area, depending on the specific case) that results

in an implementation cost corresponding to exactly that amount (i.e. EUR 10 million). The financial cost of implementation for the businesses concerned is regarded in isolation. The positive impact of the law (i.e. its social benefit) is not taken into account. In our example, the protection and prevention measures have a beneficial effect on the health of the workers, as well as their family members and infection rates in society as a whole. Moreover, the wider economic effects on other industries or along the value chain are left out of the equation. Returning to our example: the protection and prevention measures result in increased demand for relevant products, thereby leading to value creation in the given industry and its upstream industries. In general, neither **macroeconomic multiplier effects**, nor the social benefits of the rule and impact of its enactment (or elimination of another piece of legislation) on society (e.g. on workers, consumers, or the environment) are taken into consideration.

The one-in, one-out principle treats the existing regulatory level in a certain sector as the “perfect” baseline without any basis in research. The problem, however, is that some sectors may in fact be over-regulated, while other sectors certainly require more regulation (even if that entails additional costs). The one-in, one-out principle therefore imposes tight cost constraints on policymaking.

Aside from the incorrect general approach, the one-in, one-out principle also has a number of specific weaknesses. In particular, it would further complicate and slow the already cumbersome legislative process in the Union.

In addition, inflexible rules like the one-in, one-out principle result in **rigid policymaking** and make it difficult to respond to new global challenges, such as climate change, the collapse of ecosystems, or global pandemics. The European Union’s ability to meet those challenges with new and ambitious legislative proposals would be jeopardised. Furthermore, the one-in, one-out principle is at least potentially in conflict with the goals of the “Green Deal”. To date the Commission has not stated which interest would take precedence in the event of a conflict of interests. That is why “Green 10”, a coalition of the largest environmental NGOs in the EU, has addressed an open letter to the Commission: „This notion is inherently incompatible with the increased climate and environmental ambition set out by the Commission President-elect and risks undermining the potential benefits of new initiatives under the European Green Deal. [...] The principle would not only undermine von der Leyen’s own plans for a European Green Deal, it would also put at risk existing standards that protect Europeans and the environment.” (Green 10, Open letter for European Parliament to reject misguided „One in, one out principle” and introduce sustainability screening of new initiatives, 16.09.2019).

Ultimately, the sector-by-sector application of the one-in, one-out principle planned by the Commission **risks blocking the development of entire policy areas**, together with the **risk of lowered standards of social protection**. Given that the existing EU legislation has been regularly and thoroughly screened by the Commission as part of the “Better Regulation Agenda”, it seems highly unlikely that a large number of unnecessary burdens can be identified in the scope of a one-in, one-out strategy. Instead, there is the risk that certain sectors will be detrimentally affected at their core. The densely woven set of worker protection rules under EU secondary law (occupational health and safety, protection of certain worker groups, working time rules, worker participation) is a good illustration of this. Since those targets are a cost factor for enterprises, if the one-in, one-out principle is strictly applied, higher standards in one field would need to result in lower costs (and therefore lower standards) in other fields of worker protection (Tansey 2016). Likewise, the entirely new regulation of a previously unregulated area of worker protection would have to lead to a reduction in the burden elsewhere – assuming strict application of the one-in, one-out principle – which would place massive pressure on the existing legislation.

In the field of worker protection in particular, even if the introduction of a strict one-in, one-out principle on a sector-by-sector basis were not to result in a lowering of standards, it would prevent a future improvement in the level of protection. That, however, is incompatible with the primary law requirement for Member States to **strive for a high level of protection** in social policy in general and worker protection in particular. Therefore, the automatic application of the one-in, one-out principle in this area would even **violate EU treaties** (Leidenmühler 2020a, 20).

Demands

In order to ensure the quality of EU legislation, it would be desirable for the Commission to check secondary law regularly in light of current research findings. However, that should involve **careful and comprehensive evaluation** on a case-by-case basis. In any case, the one-in, one-out principle, which operates according to an undifferentiated approach and is far from precise, even when applied on a sector-by-sector basis, is not a reasonable response to that. It is not the quantity of legislation that is important, but the quality. Ongoing checks should be made of whether rules, overlaps and inconsistencies are justified or should be eliminated. However, the simple and isolated calculation of the cost burden (for businesses) is certainly insufficient (Van den Abeele 2021, 4).

If a one-in, one-out principle is to be applied, the **consequences for the economy overall** should at least be determined in the form of a **detailed cost-benefit assessment**.

Otherwise, key aspects of the legislation, such as the effects on public health or the environmental benefit, plus the impact on other sectors and along the value chain will remain disregarded.

A closer examination of the Commission's Communication of 29 April 2021 in light of the above reveals that it takes into account some of the concerns, at least to some extent. It includes, for example, a commitment – albeit made in passing – to standards of protection in the economic, social and environmental fields. Furthermore, it provides for the option of the one-in, one-out principle to be applied across sectors or time periods or to be suspended in certain cases (European Commission 2021, 11). Those options should certainly be used in order to **safeguard the accustomed high standards of protection that are also mandatory under EU primary law**.

Literature

Alemanno, Alberto (2015): [How Much Better is Better Regulation?](#), *European Journal of Risk Regulation* 2015, 344-356.

European Commission (2017): [Communication "Completing the Better Regulation Agenda: Better solutions for better results"](#) of 24 October 2017.

European Commission (2021): [Communication "Better Regulation: Joining forces to make better laws"](#) of 29 April 2021.

Leidenmühler, Franz (2020): [Das One-In-One-Out-Prinzip im Europäischen Rechtsetzungsprozess: Weniger ist nicht immer mehr. \[The one-in, one-out principle in the European legislative process. Less is not always more.\] Study on behalf of the Vienna Chamber of Labour \(AK Wien\).](#)

Leidenmühler, Franz (2020): [„One-in-one-out“ als Gesetzgebungsmaxime? Weniger ist nicht immer mehr! \[One-in, one-out as a legislative maxim? Less is not always more!\] Vienna Chamber of Labour \(AK Wien\), info letter EU & international 04/2020, 15-20.](#)

Tansey Rachel (2016): [Using "Better Regulation" to make things worse: Industry tactics to delay and weaken workplace cancers law.](#) Brussels, *Corporate Europe Observatory*.

Timmermans, Frans (2019): [Remarks at the European Commission's stakeholder conference, "Better Regulation: taking stock and sustaining our commitment"](#), April 2019.

Van den Abeele, Éric (2021): ["One in, one out", an incongruous approach to the major European challenges.](#) ETUI Policy Brief 2021.13.

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