

A slide away from better regulation, not progress towards it

Dear President von der Leyen, dear Commissioners,

We are writing to set out civil society's concerns regarding the proposals to change the existing Better Regulation guidelines, and on other proposals in your communication dubbed "A Simpler, Clearer, and Better Enforced EU Rulebook." The undersigned organisations believe, that the Commission is now taking steps that are unacceptable from a democratic perspective and that divide society and create a hierarchy of stakeholders, as they confer advantages on companies at the expense of the public and the economy as a whole.

Several of the proposed reforms risk undermining evidence-based policymaking, transparency and accountability by reinforcing a structural imbalance in favour of a narrow set of industry interests. We therefore believe important elements of the Communication should be reconsidered. These concerns are reinforced by the European Ombudsman's recent findings on maladministration in urgency procedures. Now the Commission responds by weakening the same rules, so it can continue unabated on the basis of weakened guidelines.

The undersigned organisations are particularly concerned about the following elements:

1. Urgency Procedures and Impact Assessments

In the Communication, the Commission commits to more impact assessments but reduces their quality and relevance by limiting them through a "matrix of key impacts" focussed on costs on business. To address the Ombudsman's findings the Commission attempts to define how "urgency" may allow for derogations from standard procedure but fails to reassure. Firstly, "urgency" is defined too broadly including a vague reference to "political context" that no certainty or predictability can come of it. Secondly, the Commission creates two tiers of urgency procedures, one with limited impact assessments and consultations, one one of "particular urgency" completely without either. Any derogation from standard procedures must be narrowly defined, objectively justified and subject to independent scrutiny.

On the same note, we find it deeply troubling that the Commission suggests that the European Parliament introduce impact assessments on "substantial amendments" using the "standard cost model". This methodology is outdated and problematic, as it does not take into account the real cost of a legislative proposal in the whole of society, including environmental and social impacts (on which the economy depends). The economy does not exist in a vacuum, and should not be considered as such. The Commission is attempting to make way for a simple and fast route to 'simplification' of European laws. Political choices concerning workers and social rights, environmental protection, consumer protection, digital rights, public health or fundamental rights must not be subordinated to simplified cost-benefit analyses

2. Consultation and Stakeholder Participation

While the Communication introduces no major formal changes to consultation requirements, we are concerned by the Commission's increasing reliance on "targeted consultation" formats in practice. By that, the Commission often means disregarding other views than those of selected business groups. One of the most recent examples is the new tool of 'reality checks' where most often only businesses are invited to contribute in the process and where any transparency is missing. The result is that when preparing proposals, the Commission is risking blind spots and great injustices. Such an approach is, we believe, in breach of the EU Treaties, as well as adopted standards of public consultation.

3. National Standards Beyond EU Minimum Requirements

We are particularly concerned by the increasingly negative framing of so-called "gold-plating", a term which originated from vested industry interests which want the Commission to limit member states introducing more stringent measures than those agreed on at the European level. In itself, there is nothing wrong with 'gold plating'. Adopting more ambitious measures at the national level, is legitimate when they aim at raising standards, and national legislatures are within their rights to do so. There may even be the positive outcome of raising the standard at EU-level, and law often influences culture and practice.

For that, we condemn the one-sided wording on 'gold-plating', and the measures the Commission proposes to take. The Commission's proposal suggests action should be taken at the European level, even if measures at the national level are not contrary to EU law. This is set to happen in the context of the European Semester, among others. If we look at social policy, labour laws, and working conditions, those are areas where Member States often apply more ambitious measures – and must be able to continue to do so, in line with Article 288 TFEU.

4. Temporal Policy restrictions

There are quite a few elements in the communication– as they stand – are undefined, but which we fear could come to detrimental use. There is the desire to introduce more grandfathering clauses, which risk being used to delay the phasing in of crucial rules to protect the environment or public health. And there are the highly problematic sunset clauses: with that change in legislation it is no longer the abolition of a protective provision that must be justified, but its retention. The political burden of proof is reversed. Crucial regulation could be automatically repealed if no agreement is reached on the bill in time.

The way forward

In general, the Commission is introducing a set of so-called reforms, all to promote a more myopic approach to decision-making. It is about marginalizing other interests than those of businesses in the procedures. By reducing scrutiny, weakening participation and prioritising a limited set of economic indicators, they risk obscuring broader impacts on environmental sustainability, social cohesion, public health, consumer rights, workers' rights and fundamental rights. This is the very opposite of Better Regulation.

The wasteful spendthrift at the public's expense must stop. We call for:

- A stop to the breach of the EU Treaty: The Treaty's article on the necessity to integrate eg. environmental concerns, workers and consumer interests, must be reflected in the Better Regulation guidelines (Article 3, 11 and 153 TFEU.)
- Transparency as a priority: Consultations must always be public, open and transparent.
- Significant academic, civil society and trade union participation in advisory groups. The time of corporate dominated 'expert groups' must come to an end.
- Thorough investigations of the impacts of new legislation, including all relevant aspects. Crude cost-benefit analyses give a biased and misleading image to decision-makers.
- An end to single-minded attacks on so-called 'gold plating'. Fundamental protection standards e.g. in labour and labour protection law, consumer rights and environmental law are now at stake.

We urge the Commission to take these concerns into account when revising the Better Regulation Guidelines and Toolkit.

We remain available to collaborate and contribute to this process.

Yours sincerely,

ActionAid France

ACV-CSC (Belgium)

Alternatif Bilisim (Turkey)

Animal Advocacy & Food Transition (EU)

Arnika (Czech Republic)

Association For Promotion Sustainable (India)

ATTAC Austria

ATTAC España

ATTAC France

Austrian Federal Chamber of Labour

BirdLife Europe and Central Asia

CEE Bankwatch Network (Central and Eastern Europe)

CHEM Trust (Europe)

Child Rights International Network (Belgium, UK and international)

Climate Action Network (CAN) Europe

CorA-Netzwerk für Unternehmensverantwortung (Germany)

Corporate Europe Observatory (Europe)

Defend Democracy (EU)

Die Bürokratiemonster(Germany)

Digitalcourage (Germany)

Ecologistas en Acción (Spain)

Electronic Frontier Norway (Norway)

epicenter.works (Austria)

European Anti-Poverty Network (Belgium/Europe)

European Civic Forum (EU)

European Digital Rights (EDRi) (Europe)

European Environmental Bureau (EU)

European Grandparents for Climate (Austria)

European Network Against Arms Trade (Europe)

European Public Services Unions (EPSU, Europe)

European Transport Safety Council (ETSC, Belgium)

Fairwatch (Italy)

Fern (EU)

FNV (The Netherlands)

foodwatch international (Belgium)

France Nature Environnement (France)

Friends of the Earth Europe (Europe)

Générations Futures (France)

GLOBAL 2000 (Austria)

Grandparents for Future (Austria)

Greenpeace EU Unit (BE/EU)

GYBN Austria - Austrian Youth Biodiversity Network (Austria)

Human Development Research Initiative (HDRI) (France)

Irish Coalition for Business and Human Rights (Ireland)

JESC - Jesuit European Social Centre (Belgium)

LobbyControl (Germany)

Kettensäge stoppen! (Austria)

Notre Affaire à Tous (France)

Palombar - Associação de Conservação da Natureza e do Património Rural (Portugal)

PowerShift e.V. (Germany)

ReCommon (Italy)

REZERO (Spain)

Rise For Climate Belgium (Belgium)

The Good Lobby (Europe)

Transparency International EU (EU)

Trócaire (Ireland)

WSM - We Social Movements (Belgium)

WWF European Policy Office (Belgium/EU)

ZERO - Association for the Sustainability of the Earth System (Portugal)