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**THE EU'S PATH TO 2030**
DEFINING PRIORITIES FOR A STRONGER UNION

# HOW TO ACHIEVE BETTER EU LAWS

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## SUMMARY

We are just entering a new EU five-year legislative mandate and with the new mandate comes new priorities. Recent blue-ribbon reports by Enrico Letta and Mario Draghi placed great emphasis on the need to reduce the EU's regulatory burden to improve productivity and these were largely taken onboard in Commission President von der Leyen's mission letters to the new Commissioners. The process through which laws are enacted, enforced and reviewed has received far too little attention over the past several years and is long overdue for some serious re-thinking.

This contribution to the special CEPS series 'The EU's Path to 2030' seeks to motivate policymakers on the need for serious reform. It does so by providing 12 practical recommendations that policymakers can take forward into the new mandate – and ensure that future EU laws are the best that they can possibly be.



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This CEPS contribution is part of the special series 'The EU's path to 2030', where each of our research units were invited to provide insights on key policy files, offering guidance and recommendations for policymakers throughout the course of the new mandate up until 2030. The opinions expressed are those of the authors in their personal capacity and do not reflect the views of any affiliated institutions.

# INTRODUCTION

Many would view the EU as being among the best in the world in terms of the quality processes that it employs to create and implement law and regulation. In practice, however, EU stakeholders, experts and policymakers have been increasingly concerned in recent years over the growing number of legislative measures introduced in each term and with it the growing size of the EU *acquis*; the growing complexity (on average) of the measures adopted and thus the growing regulatory burden on EU firms, as well as the increasing risk of unintended interactions or conflicts among the multiple laws introduced.

This contribution to the special CEPS series 'The EU's Path to 2030' is emphatically not arguing that regulation is inherently bad. The EU's regulation generally addresses real needs. But it is appropriate, in line with the Treaties, to seek to ensure that EU regulation is *proportionate*, which is to say that it's no more burdensome than is necessary to achieve the desired end goals.

Following the emphasis that both Letta Report and the Draghi Report place on the need to reduce regulatory burden to improve EU productivity, it's now timely to revisit these issues.

Primary research isn't being presented here – rather, a range of analysis drawing heavily on previous work is being brought together in this one contribution to provide a consolidated set of up-to-date recommendations. Most of these issues are not new but they have intensified with the passage of time.

Some of the quantitative data presented is new, but some is likewise older – developing quantitative measures of the legislative process' effectiveness is time-consuming, so much of the work that has been done – by this author and by others – hasn't been updated for several years now.

## A WELL-DEVELOPED PROCESS

Formulating new EU laws and revising existing laws follows a well-defined Better Regulation (BR) process. Better regulation is a vital part of the EU's governance. It seeks to ensure that measures are no more burdensome than necessary and that EU actions are appropriately undertaken at EU rather than at Member State level, in line with the principle of subsidiarity (i.e. that the EU should not act where the Member States are better equipped to solve the problem or the address the issue themselves).

The BR process attempts not only to rigorously evaluate new proposals *ex-ante* but also to assess the added value of EU policies *ex-post* to work out whether the intended

benefits have materialised and to improve or eliminate programmes that have failed to perform.

BR tools and processes should ideally contribute to the EU's perceived legitimacy and to maintaining public confidence by ensuring that policies are fact-based, that policy processes are transparent and that EU actions are fit for purpose. Ensuring that our tools remain sharp is therefore crucial for maintaining the public's confidence in the EU.

## MANY ELEMENTS OF THE EU LEGAL AND REGULATORY PROCESS ARE BROKEN (IN PRACTICE)

This contribution's author emphasises that he is a great fan of the BR process; nonetheless, it's undeniable that elements need to be improved and that others have become somewhat rundown over the most recent legislative term. BR seeks the continuous improvement of process but the BR process itself must now be improved.

As a preview, some of the key issues highlighted are:

- The Council and European Parliament (EP) being insufficiently engaged in the BR process;
- Their lack of engagement means that too much falls to the Commission, which is not only burdensome but also implies a dearth of checks and balances;
- Economic analysis as part of the Impact Assessment leaves much to be desired and is in effect totally ignored after a legislative proposal has been submitted; and
- Measures that have been put in place to reduce the regulatory burden, including on SMEs, are substantially underperforming.

## THE NEW COMMISSION APPEARS TO BE COMMITTED TO REGULATORY RATIONALISATION AND SIMPLIFICATION

Our sense is that the European institutions' commitment to avoid unnecessary regulatory burden has been somewhat lacking under the first von der Leyen Commission, more than it was under the previous Juncker Commission. However, it's heartening to see a renewed commitment as part of President von der Leyen's new Commission. Notably, her mission letter to Commissioner-designate Dombrovskis calls on him to lead numerous initiatives that seek to achieve better law and to achieve regulatory simplification wherever possible.

## Stakeholder concerns over the growing volume and complexity of EU law

There's no question that the EU *acquis* is growing. One occasionally hears claims that it has grown from 100 000 pages to 200 000 pages since 2004, when 10 new Member States were admitted to the EU, thus greatly complicating the accession process for new candidate Member States. There is, however, no clarity in the literature as to the actual size of the EU *acquis*. If we cannot say much about the *stock* of EU law, we can at least comment on its *flow*.

That flow is substantial – and it's not slowing down. There have been at least 370 new laws in each of the past five legislative terms (five years each), with an increase of 14 % to 16 % from each term to the next, with the sole exception of the Juncker term, where the rate of new production fell by 24 % – Juncker consciously sought to reduce the amount of new legislation being enacted in an effort to reduce the growth of regulatory burden.

*Table 1. New Commission legislative proposals in the first four years of each five-year term (1999-2024).*

| Term | Years | Number of legislative proposals | Increase since the previous term |
|---|---|---|---|
| Prodi | 1999-2004 | 374 | - |
| Barroso I | 2004-2009 | 434 | 14 % |
| Barroso II | 2009-2014 | 496 | 16 % |
| Juncker | 2014-2019 | 378 | -24 % |
| von der Leyen I | 2019-2024 | 431 | 14 % |

*Source:* Sekut & Marcus, 2024.

The number of laws is only suggestive of burden – one should consider not only the laws' size but also ideally their complexity. Complexity is hard to measure, but in terms of length, overall growth is visible over time – under former Commission President Romano Prodi, the average length (articles plus annexes, thus the active text), was 4 501 words; under von der Leyen, it has shot up to 8 582 words. Most of that growth (a whopping 76 %) took place from Prodi to Barroso II.

Our digital legislation dataset shows a dramatic increase in the pace of new EU laws involving digitalisation in recent years. More than three quarters of the 88 primarily

digital laws in place in 2024 were passed after 2011 (when only 20 such laws were in place). Most of these were proposed roughly after 2015 when the European Commission introduced its Digital Single Market strategy.

Perhaps even more important, several of the digital laws enacted during the past two Commission mandates, including the GDPR, DSA (which places its most intensive burdens on very large online platforms and search engines), and DMA (only for *gatekeeper* firms), are likely to be particularly burdensome on the firms that they impact.

### STAKEHOLDER CONCERNS OVER THE GROWING VOLUME AND COMPLEXITY OF EU LAW

Stakeholder concerns over the growth in the number and complexity of laws related to the green and digital Twin Transition have been prominent in recent years and the raw numbers appear to lend support to these concerns.

A survey by the European Investment Bank (EIB) indicates growing concern on the part of businesses – 60.2 % of large firms and 65.4 % of SMEs perceived business regulations such as licences and permits, together with taxes, as a serious impediment to investment. For businesses to complain about regulation is nothing new but in this case there are good grounds for them to do so.

A recent study for the EP on the impact of EU legislation regarding the digital and green transitions on SMEs – who tend to feel the regulatory burden the most – likewise found that one should take seriously SMEs' concerns over '*the introduction, in a short period of time, of a large number of new EU rules driving the digital and green transition [and] about the cumulative impact of the changes and the perception that rules may not be fully consistent in all cases*.' Even though many of the new measures include articles that seek to reduce the impact of regulation on SMEs, those provisions are only partly effective because SMEs are often suppliers to larger firms that are obliged by EU law to push their obligations down to their suppliers.

## ENACTING AND MAINTAINING BETTER LAWS

As explained above, formulating new EU laws and revising existing laws follows a well-defined Better Regulation (BR) process. The BR process attempts not only to rigorously evaluate new proposals *ex-ante* but also to assess the added value of EU policies *ex-post* to determine whether the intended benefits have materialised and to improve or eliminate programmes that failed to perform. Ensuring that the EU legal *acquis* continues to be fit for purpose is also within the remit of the BR process.

The BR process is arguably among the best of its type in the world; however, this sets a low bar for comparison. Gaps and shortcomings have become increasingly obvious over time. It can be credibly argued that the BR process received somewhat less attention under the first von der Leyen Commission than under the previous Juncker Commission – however, the new (second) von der Leyen Commission appears to be renewing its commitment. Commission President von der Leyen's mission letter to Commissioner-designate Dombrovskis calls on him to '*strengthen and ensure full compliance with the Commission's Better Regulation standards in the preparation of new initiatives with significant impacts*'.

## A joint responsibility of the European Institutions?

**Recommendation 1.** The Commission should carry through on its commitment to 'strengthen and ensure full compliance with the Commission's Better Regulation standards'.

**Recommendation 2.** The three co-legislators committed in 2016 to jointly implement the Better Regulation system. The EP and Council need to step up to do their share to provide better checks and balances within the overall Better Regulation system.

It's clear that the responsibility for enacting sound and proportionate laws rests with three European institutions – the Commission, the EP and the Council. The three jointly signed an Interinstitutional Agreement to that effect in 2016.

Words do not always translate into deeds. The EP launched an Impact Assessment capability within the European Parliamentary Research Service (EPRS) but it only undertakes analyses upon the political leadership's request and despite progressive improvements, appears to provide only a very weak check on the Commission's work. The EPRS now appears to be assessing many of the most important files, which has not always been the case. For instance, during the last term, the EPRS has to its credit conducted reviews of the Commission's Impact Assessments on the DMA, the DSA, the Data Act and the AI Act – arguably the four most important initiatives for digital services.

But each of these is a document of some eight pages that reads like a book report written by a talented college student – each evaluates the Impact Assessment solely on its own merits as a document, with negligible recourse to other facts or to external expertise. One really must question whether this constitutes the kind of insightful analysis that's called for.

The Council appears to play no role whatsoever in the BR process. This enormous gap has been attributed, first, to the lamentable reality that progress on better regulation in the Member States is still patchy; and second, to the fact that the political compromises struck in the Council often follow a very different logic from what the Commission adopts in Impact Assessments. Yet President von der Leyen's mission letter to Commissioner-designate Dombrovskis calls on him to '*lead the negotiations on a renewed Interinstitutional Agreement on Simplification and Better Law Making, presumably to replace the existing Interinstitutional Agreement*.' There is thus now the chance for real momentum to undertake reform, in this respect as in many others, within the overall BR system.

## *EX-ANTE* IMPACT ASSESSMENTS

**Recommendation 3.** The co-legislators need to pay far more attention to reducing the regulatory burden for small and medium enterprises (SMEs). This is an issue not only for the Impact Assessment but throughout the legislative process.

**Recommendation 4.** As part of the process of strengthening ex-post evaluation, the ex-ante Impact Assessment should pay far more attention than is typically the case currently to ensuring that the data necessary for a proper evaluation is captured from the outset. The evaluation's schedule should also be considered.

**Recommendation 5**. The Commission should re-double its efforts to ensure that every legislative proposal is accompanied by an Impact Assessment document, except in cases of genuine urgency. Where it is truly impractical to submit an Impact Assessment, the Commission could submit a new kind of document, a 'post-implementation review (PIR)' of the decision.

**Recommendation 6.** Any significant piece of EU legislation will differ substantially from the Commission's initial legislative proposal. Late in the process but prior to final enactment, an addendum to the Impact Assessment should be prepared to summarise the differences between the law as proposed and the law as enacted, including an update of the expected administrative costs and adaptation costs.

The process relative to *ex-ante* Impact Assessments benefits from years of progressive refinement, notably including the introduction of a Regulatory Scrutiny Board (RSB) that operates under the Commission's auspices. Today, many Impact Assessments are well done. Others, however, leave much to be desired.

How SMEs are handled is an aspect of special concern. Within the Impact Assessment, the Commission is required to provide an analysis on the expected impact for SMEs and of the data needed for subsequent evaluation. We would claim (based on years of experience reading Impact Assessment documents) that in practice, both are usually done hastily as a 'check the box' exercise. The SME analysis is typically a paragraph or two that makes thin arguments to the effect that the impact on SMEs is negligible. The recommended data collection in support of subsequent evaluation is likewise usually a thin exercise because there's no pressure to do otherwise – any shortcomings will only become obvious years later. Even when EU law exempts SMEs from burdensome obligations in theory, they're often forced to comply in practice because they supply larger firms that are subject to the obligations.

The Draghi report is particularly critical of how SMEs are handled in Impact Assessment documents: '*About 80 % of Commission Work Programme items are relevant to SMEs. Nonetheless, only around half (54 % in 2020 and 45 % in 2021) of impact assessments substantially assessed the impacts of legislation on SMEs, and almost one-third of Regulatory Supervisory Board opinions asked for improvement in this regard. Moreover, the 2022 SME Test Benchmark pointed to a majority of analysed impact assessments not being of sufficient quality. The picture is bleaker when small mid-caps are considered, in particular given the lack of a commonly agreed European definition and of readily available statistical data. This has resulted in small mid-caps being largely absent from EU policy-making, as well as from related impact assessments*' (p. 322).

The mission letter to Commissioner-designate Dombrovskis calls on him to oversee the implementation of an SME and competitiveness check – once again, this is the right message to convey at the right time.

A noteworthy gap, though, is that there are a significant number of Impact Assessments that should have been submitted but were not – sometimes with appropriate justification but often without. In previous work, we found that the percentage of legislative proposals submitted without an Impact Assessment was 55 % under the Barroso II Commission from 2010-13 and 54 % under the Juncker Commissions from 2015-18. Neither Commission submitted many Impact Assessments during the first year of its legislative cycle (just 27 % and 22 % under Barroso II and Juncker, respectively). Of the legislative proposals submitted without an Impact Assessment, we found that in 42.1 %, 27.4 %, and 33.3 % of the cases in 2015, 2016, and 2017, the absence was not substantiated or

justified. We're not aware of analysis covering the first von der Leyen Commission but anecdotal evidence indicates that this continues to be problematic and that some topics are more problematic than others.

In cases where no Impact Assessment was submitted as a result of *bona fide* urgency, it has been suggested that the Commission might submit a post-implementation review (PIR) of the decision that was adopted to provide a quick evidentiary baseline for subsequent decision-making.

A conspicuous gap has to do with addressing the numerous changes that take place as laws go through the EP, Council and the trilogue process. The law that emerges from this sausage factory typically differs substantially from the legislative proposal that entered it. No subsequent analysis is attempted. As a result, neither the EP nor Council are under any pressure to reflect on the additional burdens that they are imposing; conversely, they often feel that they can score points with voters by adding seemingly attractive features.

This is a serious defect that urgently needs to be corrected, as was pointed out in the Letta report, in the Draghi report and also in our own work. On top of undermining the effectiveness of the Impact Assessment process, it also renders largely meaningless the *one in one out* strategy. The Letta report proposed that cost estimates in the Impact Assessment should be constructed in a modular manner, enabling them to be updated to reflect changes in the law as it works its way through the legislative process. Indeed, this is labour-intensive but we would argue that it's necessary.

In most other respects, the Impact Assessment is doing a reasonably good job. The same cannot be said for the *ex-post* evaluation process.

## *EX-POST* EVALUATIONS

**Recommendation 7.** The ex-post evaluation that all significant programmes are in theory subject to should in fact be carried out in a timely manner. Going forward, the Impact Assessment, and ultimately the legislation itself, should establish a default schedule for subsequent evaluation; this should however be done in such a way that it doesn't preclude joint evaluation of multiple interrelated measures.

**Recommendation 8.** In assessing a programme's effectiveness, the ex-post evaluation must consider whether the law is actually mitigating the problem for which it was created. To make that possible, much more attention is needed when the Impact Assessment is drafted to ensure that data is collected that allows for a proper subsequent evaluation.

**Recommendation 9.** The process of evaluating legislation ex-post should not be done by the Commission. Moving the function for instance to the Court of Auditors, together with assigning it adequate staff resources, could lead to more objective and impartial evaluations.

*Ex-ante* Impact Assessments are often (but not always) done with great professionalism. The Commission is under some pressure because a missing or poorly done Impact Assessment can lead to pushback and to difficulties in getting the proposed law adopted by the EP and Council. Unfortunately, the same cannot be said of the *ex-post* evaluation – if an evaluation isn't done, quite possibly nobody will notice. If it's poorly done, the Regulatory Scrutiny Board could in principle complain but in practice this rarely happens – it's by then too late to fix any problems.

A short review of the documents published by the Commission suggests that the number of *ex-post* evaluations being undertaken per year is substantially less than the number of *ex-ante* Impact Assessments (also when one considers an expected lag of perhaps five years between the two). A part of the difference might reflect joint evaluations of two or more interrelated regulations together – potentially a good practice – but our sense is that the number of missing evaluations is considerably larger than can be explained in this way.

In the evaluation reports themselves, there seems to be a tendency to evaluate measures based on the direct effects of their provisions, rather than on the more fundamental

question of the degree to which they have actually mitigated the problem that the law was brought into force to address.

Despite dozens of laws enacted from 2014-19 to implement the Commission's Digital Single Market (DSM) strategy, the complaints from e-merchants that motivated the DSM programme in the first place seem to be slightly higher than they were at the outset. In some cases, a problem has got visibly worse but no action follows. One example of this is the Parcel Delivery Directive, where unregulated prices for cross-border parcel delivery are unreasonably high and increasing relative to domestic parcel delivery prices despite a law that was meant to bring prices down – and yet there has been no real effort to take remedial action.

With that said, we re-emphasise that the correct data needs to be gathered from the outset. Identifying the data to be collected needs to be based on the problem to be solved, not just on the levers that the law uses to try to solve it.

The Commission is responsible for evaluation but the Commission is not a neutral party. In any other government activity, we would typically say that an agency cannot be writing its own report card. For most measures, the Commission can be expected to have a bias to 'wave things through', identifying at most minor opportunities for improvement. For those where the Commission wants to justify further work, they can be expected to have the opposite bias.

The EP's EPRS could potentially serve as a corrective. As previously noted, they are currently underperforming in this role. A more serious problem in this context is that they only work on topics that are requested from the political level, meaning they cannot be viewed as providing a fully neutral check and balance.

The Court of Auditors could possibly serve as a proper corrective. They have the necessary independence and objectivity, and they occasionally undertake evaluations that go far beyond mere financial aspects. For them to step up to a new role where they would become the primary reviewer of most or all Impact Assessment and Evaluation documents, they would need a substantial increase in resources, including resources to retain consultants under contract (possibly transferring resources from the Commission). This isn't the only possible solution – but it could be a promising one.

## SIMPLIFYING THE STOCK OF EU LAWS

**Recommendation 10.** The Commission should be making greater use of the REFIT process to simplify existing laws to reduce needless regulatory complexity.

**Recommendation 11**. The 'one in one out' programme is genuinely important and promising but it needs to offset the administrative cost of a new programme as enacted, not only the administrative cost of the programme as initially proposed. 'One in one out' cannot hope to fully offset the programme's adaptation costs, which will usually be far greater than the administrative costs but it should at least monitor the adaptation costs for comparison purposes. Economic gains from the programme should ideally also be reflected.

**Recommendation 12**. The Better Regulation process, and in particular the ex-post evaluation portion of Better Regulation, appears to be urgently in need of ex-post evaluation itself (i.e. REFIT). That process would need to be independent of the Commission, which is subject to a conflict of interest in evaluating laws that it itself proposed.

As previously noted, beyond the BR process' highly visible function of formulating new laws and the less visible process of evaluating existing laws, BR is also how the EU tries to ensure that the stock of all laws remains effective and fit for purpose. The two mechanisms that should be highlighted here are the Regulatory Fitness and Performance (REFIT) Programme and the 'one in one out' strategy.

A key mechanism used to prune back regulatory excess is the REFIT Programme. Under REFIT, a *codification* seeks to achieve simplification by consolidating all the provisions of an existing legal act and its amendments into a new legal act; a *recast* goes further by incorporating substantive amendments along with the consolidation.

In practice, very little of this kind of simplification has been done, probably because it's hard work and because politicians are unlikely to feel that this kind of work endears them to their voters. The von der Leyen Commission prepared 17 recasts and eight codifications, while the Juncker Commission proposed 22 recasts and eight codifications. In comparison, the Barroso II Commission put forward only two codifications and 14 recasts. Compared to the hundreds of new laws that have been proposed in each five-year legislative term, these numbers are tiny.

Simplifying laws need not imply reducing the degree to which laws protect the public. In many cases, we learn from experience that some aspects of a law don't achieve their intended goal in the most effective, most efficient and least burdensome way.

The *one in one out* strategy doesn't seek to repeal one law for each new law that is proposed, as might be assumed – instead, it seeks to offset the burden imposed by new laws by reducing other burdens, ideally in the same sector. As currently implemented, it suffers from two serious shortcomings. First, it seeks only to reduce *administrative* burden, thus ignoring *transition costs and operational costs* that often are vastly greater. Second, it seeks to reduce the administrative costs in the measure as proposed, not the costs in the measure as enacted, which are often light years apart. Thus, there should be a major re-think over the strategy's future and potential reforms.

The BR process has been in place for decades and has frequently been revised. With each revision, it is different, but is it *better*? The BR process is itself in urgent need today of the kind of rigorous review that it seeks to apply to all other EU programmes.

Is the BR process itself in fact *effective and efficient*? It's time to find out – meaning it should be subjected to its own rigorous *ex-post* evaluation, an evaluation that would have to be completely independent of the Commission, which would have an obvious conflict of interest.

## CONCLUSIONS

With the beginning of a new European mandate, we've seen some encouraging signs that the Better Regulation agenda is back and is being given a second lease on life – the various passages quoted in this contribution from President von der Leyen's mission letter to Commissioner-delegate Dombrovskis are testament to this renewed interest.

Such renewed interest is coming hot on the heels of this year's Letta and Draghi reports, both of which strongly emphasised that the EU's regulatory burden needs to be reduced. Yet good intentions alone won't lead to better results. With the opportunity presented by a new five-year cycle, now is the moment to really consider serious reform. The 12 recommendations contained within this contribution are a good starting point - it's now up to EU decision-makers to take them forward.

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