

## **ETUC Resolution EU ‘Better Regulation’ for All**

Adopted at the Executive Committee of 28 and 29 October 2020

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### **ETUC key messages**

**‘Better Regulation’ should deliver for all and serve the interest of European society.** Business interests alone cannot be put on an equal footing with the general interest, which also includes the interests of workers, citizens, consumers and the environment.

**Regulation needs to regain its role as foundation for the people of Europe.** Above all, regulation represents an investment in the shared prosperity of our societies and our future and cannot be reduced to burdens and costs.

**‘Better Regulation’ should comply with the fundamental values, principles and objectives of the EU as set out by the Treaties.** “In defining and implementing its policies and activities, the Union shall take into account requirements linked to the promotion of a high level of employment, the guarantee of adequate social protection, the fight against social exclusion, and a high level of education, training and protection of human health.”

**Sustainability and democracy must come first.** Impact assessments should consider economic, social, and environmental aspects with the same level of detailed analysis and accuracy, taking into account both qualitative and quantitative evidence. Robust assessments are needed to ensure that decision-makers have a sound basis of evidence to take informed decisions. However, such assessments should not pre-empt the democratic debate or restrict the legislative room of manoeuvre of the Parliament and the Council and European social partners.

**The unilateral decision to introduce a ‘one in, one out’ mechanism represents a complete U-turn** in the political leadership of the European Commission. The approach has no support in the Treaties, completely lacks evidence-base and has not been preceded by any consultation. It is inappropriate for the elaboration of EU law and risks creating deregulatory pressure.

### **I. The European project as an investment for the future**

The European Union was created to promote peace, fundamental values, and the well-being of its people. The European project is an investment for the shared prosperity of our societies and for our future. One piece of European legislation has the potential of setting common standards and bridging the gaps between the 27 national legal orders within the EU internal market. Quality legislation paves the way for economic, social, and environmental progress, while ensuring cohesion and respect for the diversity within our Union.

Quality regulation is legislation that ensures fairness, legal certainty and effectiveness. In order to bring added value for its people, EU legislation must serve the interests of the many. Quality legislation looks beyond mere business interests by giving equal consideration to the general interest, including the interests of workers, consumers, citizens and the environment.

As an investment, quality legislation outweighs short-term costs by medium and long-term gains, be they tangible or intangible. It should depart from inclusive sustainability considerations and the overall benefits for society rather than engaging in biased estimations on how to eliminate burdens and costs at any price.

Quality legislation is regulation that is proportionate, necessary and capable of achieving its objectives, and that respects conferred competences, subsidiarity, human rights, and democratic processes in line with the provisions of the Treaties. It ensures transparency, accountability, evidence-based policymaking, stakeholder interaction, social dialogue and collective bargaining.

## II. The U-turn of the Commission's 'Better Regulation Agenda'

Since its foundation, the European project has paved the way for a robust *acquis communautaire*, consolidated and embodied in EU law and the national legal orders of the Member States. It is the duty of the Union to maintain, enforce and further build on this *acquis*, to ensure and improve the well-being of its people.

Starting in the early 2000s, however, a gradual shift can be observed in the narrative on EU regulation, making a direct link between the regulatory environment and the ambition to enhance competitiveness, economic growth, job creation and SME prospects. This change in discourse, shifting the focus from benefits to burdens of regulation constitutes an attack on the *acquis communautaire* and the European project.

Over the past two decades, a growing number of efforts to institutionalise burden and cost reduction as a self-standing goal has been introduced by the Commission, notably the 'Better Regulation Agenda', the Regulatory Scrutiny Board, the Regulatory Fitness and Performance Programme (REFIT), the Refit Platform and its revamped Fit for Future Platform, including a 'strategic foresight' dimension.<sup>1</sup> Beyond these existing strategies, bodies and tools, the 'Better Regulation' efforts have culminated with the recent announcement of a 'one in, one out' logic.

Immediately after her election in 2019, Commission President Ursula von der Leyen announced her intention to stamp the revised 'Better Regulation Agenda' with a 'one in, one out' switch, according to which "every legislative proposal creating new burdens should relieve people and businesses of an equivalent existing burden at EU level in the same policy area". Surprisingly, this move did not feature in the Political Guidelines or the speech of von der Leyen before the European Parliament on the day of her election. Only afterwards, this new feature was added to the working methods of the new Commission and mainstreamed in all mission letters to the Commissioners.<sup>2</sup>

The 'one in, one out' approach represents a complete U-turn in the political leadership of the new Commission. As a matter of fact, the idea of such an instrument was discussed but strongly and convincingly rejected in 2017 by the previous Commission First Vice-President Frans Timmermans as unjustified and lacking evidence-base. It was deemed inappropriate for the elaboration of EU law, as it risks creating deregulatory pressure.<sup>3</sup> In the same vein, the reference to target reduction goals was dismissed due to its inappropriateness in the EU context.

As a supposed methodological tool, the 'one in, one out' can be operated in so many various ways, that raises more concerns than trust and confidence. It could range from outright deregulatory approaches whereby every new legislative proposal has to be accompanied by the repeal of an existing piece of legislation, to calculations aiming to compensate for the

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<sup>1</sup> For more information on the background, development and political context of 'Better Regulation, please see the Annex.

<sup>2</sup> See e.g. the Mission Letter to Commission Vice-President for Interinstitutional Relations and Foresight Maroš Šefčovič. [Link](#).

<sup>3</sup> European Commission Communication: Completing the Better Regulation Agenda: Better solutions for better results. Strasbourg, 24.10.2017, COM(2017) 651 final, p. 10. [Link](#).

estimated costs of new legislation by generating an equivalent amount of savings through the removal of identified administrative, or compliance, or other burdens. As such the 'one in, one out' proposal is inappropriate for the elaboration of EU law and risks creating deregulatory pressure.

### III. For a 'Better Regulation Agenda' worthy of its name

The 'Better Regulation Agenda' together with the announced 'one in, one out' mechanism constitute a direct threat to the *acquis communautaire* as such, but also to the whole EU legal order with all the values, principles, objectives, processes and governance structures it entails. Their approach builds on a logic whereby regulation is reduced to a burden and a cost for certain groups in society, business standing in the first row.

The introduction of the 'one in, one out' switch reveals not only an attitude according to which legislation is deemed *de facto* burdensome and costly, but a suspicion against legislation *per se*. Without any further justification, this sweeping logic implies that a case-by-case analysis of the EU *acquis* would be ineffective and outdated.

The initiative of a 'one in, one out' mechanism bears no legitimacy, as it has not been preceded by any impact assessment or consultation. It rests on a non-existent evidence-base, building on a mechanical approach with quantitative reduction targets, rather than focussing on the quality of regulation and its merits. The unilateral decision to introduce such an instrument is radical and even inconsistent with the Commission's own internal evaluation procedures. There is no demonstration of how it would meet the requirements of efficiency and effectiveness which in themselves are key to the 'Better Regulation Agenda'. The concept does not build on a shared vision of what quality law-making and governance should be like within the EU legal order. It risks affecting the institutional balance and is incompatible with the EU key policy priorities, objectives, principles and the fundamental values contained in the Treaties.

The 'one in, one out' approach can by no means be considered an objective, scientific or legal concept. It is not a principle, and totally lacks support in the Treaties.

The 'Better Regulation Agenda' necessitates a profound change in order for the Union to deliver for its people and earn their support. It needs to abandon its dogma of governance by numbers, costs and short-termism, to give priority to a more qualitative approach of regulation as a long-term investment for the common good of society. Only by ensuring that economic, social and environmental considerations are assessed on an equal footing and with the same level of detail, the EU can ensure a more inclusive, sustainable and impartial approach to law-making.

A revision of the EU Interinstitutional Agreement on Better Law-Making would be key to shaping a more objective approach to EU regulation and the need to address the imbalances of the current 'Better Regulation Agenda'. A renegotiation should secure an enhanced focus on quality-related aspects in the methodology for carrying out impact assessments, placing inclusive sustainability considerations at the centre of a renewed approach. The general interest and the well-being of people should lie at the heart of this agreement setting out the rules of cooperation between the Commission, Council and Parliament, thereby also ensuring transparency, accountability and democratic scrutiny throughout the whole EU legislative process.

All in all, a 'Better Regulation Agenda' worthy of its name should be guided by the respect for and promotion of the fundamental values, principles and objectives of the EU as anchored in the Treaties.

## **IV. Regulation respecting the fundamental values of the EU**

The Union is founded on the rule of law, democracy, and the respect for human rights. Together with human dignity, freedom, pluralism, tolerance, solidarity, justice, non-discrimination, and equality these make up the fundamental values of the EU, as established by Article 2 TEU. The Union is bound to respect and promote these values when exercising its competences. In the same manner, the Union and its Member States are bound by the Charter of Fundamental Rights of the European Union when acting within the scope of EU law.

### **i) The rule of law as a precondition for building trust in the European project**

The rule of law is central to the EU legal order and a precondition for the proper functioning of any democratic society. It governs and scrutinises the use of public powers, ensuring impartiality, accountability, predictability and equality before the law. Upholding the rule of law is essential for citizens to trust public institutions in times of crises as well as normality.

A Europe governed by the rule of law is key to promoting a sustainable, fair and competitive economy, and lies at the core of the functioning of the EU internal market and its level playing field. Market forces cannot stand above the primacy of the law. Economic models and business interests must not undermine legal certainty for workers or justify a lax enforcement of the law.

The EU has a duty to develop and endorse a positive narrative on regulation as instrumental for the rule of law. Legislation has the potential of both instigating and legitimising necessary societal change. A shared commitment among EU institutions, Member States, social partners, citizens and other stakeholders is key to successfully facing up to the economic, social and environmental challenges that lie ahead of us. EU flagship initiatives such as the Green Deal, the European Pillar of Social Rights and the Sustainable Development Goals require ambitious investments both in terms of resources and quality legislation.

EU regulation must ensure that it serves the general interest. Individual interests such as the business interest cannot be put on an equal footing with the public interest. A Union that serves the few will not earn the support of the many. Making sweeping assumptions of EU law as being generally costly and burdensome for business and people leads to nothing but internal institutional EU-bashing, likely to only feed the arguments of Eurosceptics.

### **ii) Human rights and their incompatibility with a logic of burdens and costs**

Human rights are inviolable and normatively fundamental to society, setting the basis for protection and solidarity. In this way, they both limit and justify legislative action. Ensuring the respect for human rights not only requires the legislator not to intervene in people's lives more than necessary but it also necessitates positive actions to protect and promote human dignity. In this regard, the very nature of human rights, be they individual or collective, also imposes obligations on relevant counterparts, be they public or private entities or persons.

The EU should strengthen its constitutional legal framework by acceding to and ratifying the European Convention on Human Rights, the European Social Charter and relevant ILO Conventions, making EU law as such and any EU action conditional upon the full respect and compliance with legally binding international human rights instruments.

The EU must develop a methodology to thoroughly assess the impacts of regulation on human rights and fundamental values. However, such an impact assessment should not depart from a logic based on the reduction of costs, regulatory and administrative burdens. Human rights can never be a burden. No price-tag can be put on human life and dignity. Nevertheless, the

impossibility of monetising justified interests such as the respect for human rights or the protection of the environment does not mean that they add no value or that they can be outweighed by short-sighted economic cost-benefit analysis. Rather, an improved methodology for impact assessments of EU regulation should depart from a qualitative multi-criteria analysis, whereby social and environmental aspects are given the same importance as economic considerations. Thorough analysis of human rights implications should be conducted with the input from authorities, human rights defenders and leading researchers in the field.

Human rights are relevant in everyday life as well as at work but are particularly put to the test in times of crises. Climate disruption, persisting inequalities, economic recession, and the COVID-19 pandemic all remind us that respect for human rights, public health and protection of the environment must remain at the top of the EU policy agenda and have to be defended constantly.

### **iii) Democracy legitimising the discretion of the legislators**

Democratic processes and institutions are key to scrutinising the exercise of powers and building trust in the EU. Democratic decision-making paves the way for fairness, transparency, and accountability throughout the legislative process. The more democratic the European governance system is, the more inclusive, equal, and legitimate the Union will be. As democracy is fundamental to the credibility of the whole European project, so is also the respect of the role of democratic actors, including trade unions.

The methodology for assessing the impacts of EU regulation must be designed bearing in mind the particularities of the Union and its legal order. The right of initiative lies with the Commission, while the legislative powers reside with the Council and Parliament as co-legislators. Whereas the Commission may assess the impact of different scenarios before it submits a proposal, the co-legislators remain free to amend the proposal. These cumulative amendments and negotiations based on 'give and take' are sometimes essential in reaching a common understanding and agreement. It follows that every political compromise has its price and is part of any legislative process, in particular for finding a balance between the different interests and forces that exist within a democratic political system.

The composition and current working methods of the Regulatory Scrutiny Board (RSB) are nevertheless not appropriate to objectively and adequately assess initiatives stemming from various policy areas. As an unelected body, the RSB should only carry out quality control functions. It should not be able to veto an impact assessment and stop a Commission initiative, thereby jeopardising the democratic legislative process. To ensure coherence and transparency, the opinions of the RSB should always be made public and be attached to the Commission proposal upon its publication.

The 'Better Regulation Agenda' must allow the co-legislators to take informed decisions. However, the impact assessments of the Commission must not try to pre-empt the democratic debate or reduce the legislative discretion of the Council and Parliament with reference to a dogma based on reducing costs and burdens. Any such attempt to interfere in democratic decision-making increases bureaucracy, slows down the process and makes it more difficult to reach a political agreement. The EU legislative process does not need more impact assessments, but rather it needs increased accountability and transparency, including with regard to tripartite negotiations and access to documents. Negotiating parties obstructing the legislative process or failing to take political responsibility should not be able to hide behind confidentiality, but information about their reasons for stalling should be made available to safeguard democratic accountability.

The Commission shall act in the general interest of the Union when exercising its right of initiative. In this regard, the 'Better Regulation Agenda' must also allow the Commission to

exercise its own discretion. A too narrow focus on burden and cost reduction or a book-keeping exercise of 'one in, one out' may distract the Commission from its political responsibilities in delivering quality regulation, instead vesting itself with the task of reaching quantitative targets. A compensation system of 'one in, one out' may lead the Commission to postpone repeals of outdated legislation for political reasons in order to build up a reserve of potential burdens to subsequently be eliminated as new legislative proposals are dispatched, rather than eliminating them in one go. A case-by-case approach is more appropriate and less likely to result in delays because of additional bureaucracy, monetary or numerical targets.

The 'Better Regulation Agenda' should revise and enhance the public consultation mechanisms applied by the Commission to strengthen its evidence-base. In order to increase the effectiveness in gathering evidence, the consultations must ensure greater representativeness among the respondents, while also ensuring that the different replies are properly weighted according to their representativeness. Under current practice all replies are weighted equally, regardless of whether they represent individual or collective interests. Often only a small number of respondents – and mostly the same ones – participate in these consultations. To generate more representative data, the questions should be formulated in an objective instead of a binary manner, thus allowing respondents to elaborate more nuanced replies. Similarly, the consultations should pave the way for more qualitative data collection, focussing also on potential benefits of regulation. Quantitative approaches such as inviting respondents to identify potential costs skews the consultation, especially as the obstacles encountered by certain stakeholders may not even be quantifiable in monetary terms, such as human rights violations.

As part of the institutional social dialogue, policy initiatives in the social field must be preceded by a formal social partner consultation in accordance with the Treaties. The Commission ambition to consult more broadly must not weaken, and in no way replace, this prerogative of social partners. As set out by Article 154 TFEU, the Commission shall consult management and labour on the possible direction of any such EU action. A social policy initiative cannot be submitted to public consultation prior to such consultation of social partners.

A close dialogue with stakeholders is crucial in ensuring EU regulation which is fit for purpose and of high quality. In view of this, the Commission should ensure that the European Economic and Social Committee and the Committee of the Regions are properly consulted, as part of the institutional stakeholder consultation procedures already existing under the Treaties, ahead of and during the legislative process.

## **V. Regulation observing the fundamental principles of the EU**

The legislative competences of the Union are regulated by the principles of conferral, subsidiarity, and proportionality, as set out by Article 5 TEU. These principles are part of the EU constitutional framework that governs not only the scope and limits of EU regulation, but also when and how the EU may exercise its regulatory powers.

### **i) Conferred competences as a source of legitimacy**

The powers of the Union derive from the Member States. Whereas the EU can only take action within the limits of the competences conferred on it, national legislators enjoy a broader scope for action, dispose of a wider range of instruments and are more capable of creating synergies across different policy areas.

The 'Better Regulation Agenda' must be revised with due regard to the governance structure of the EU. A shared commitment and ownership at both EU and national level is necessary in order for any approach to better law-making to be successful. Already for this reason, a

quantitative logic based on burden and cost reduction is inappropriate. The multi-level and multi-institution architecture of the European project makes it difficult to assess certain costs and benefits of regulation, not only because legislative proposals may be amended during the democratic process, but also because EU law has to be implemented and applied in each Member State. Similarly, the difficulty of accessing comparable sets of data from all Member States immediately makes any attempt to cost-based analysis less reliable or more burdensome.

The impact assessments of the Commission should primarily serve to identify the most appropriate and effective regulatory instrument available in the EU toolbox. Cost reduction targets have already been dismissed as ill fitted by the previous Commission and cannot legitimately be used a criterion for identifying an adequate EU instrument. In the same vein, burden reduction is not a legitimate aim to give priority to soft law, self-regulation or EU regulations instead of directives, as a means to eliminate risks of additional costs incurred through national transposition.

For the same reasons, all references to 'gold-plating' must be abandoned. Such an approach is contrary to the constitutional right of Member States to go beyond established minimum standards when transposing EU directives into national legislation. This is in particular the case in areas such as environmental and social policy for the purpose of ensuring higher standards than the ones afforded by EU law.

The 'Better Regulation Agenda' must not only ensure that the standards established by the EU *acquis* are retained, but also make sure that minimum standards are not turned into *de facto* maximum standards.

EU legal instruments must not in any way adversely affect the exercise of fundamental rights, including the right to strike and collective action or the right to negotiate, conclude and enforce collective agreements in accordance with national law and practice. Any new EU legislative initiative in the social policy field must ensure full respect for national industrial relations systems, different labour market models and the autonomy of social partners.

'Better Regulation' must also recognise that economic freedoms under EU law have limits and cannot be put on an equal footing with fundamental rights. In the event of a conflict, fundamental workers', social and trade union rights must take precedence over economic freedoms. This primary status should be ensured throughout EU law and policies, including through the inclusion of a Social Progress Protocol, in the event of Treaty changes.

The competences conferred on European social partners under the social policy chapter in the Treaties must be respected. In accordance with Article 155 TFEU, European social partners may conclude agreements, to be transformed into EU directives. In its actions, the Commission must respect the autonomy of social partners, and the specific nature of the social partner agreements. In this respect, the 'Better Regulation' agenda or the 'one in, one out' logic cannot apply, as such interference would undermine the autonomy of social partners as well as the balanced outcomes struck in these negotiations.

## **ii) Subsidiarity and the cost of non-Europe**

The principle of subsidiarity provides that the Union shall act only to the extent that the Member States cannot better achieve a given objective. In this regard, subsidiarity may function as a limit to or a justification for EU action. Typically, EU level intervention may be justified by a wish to regulate shared interests, common challenges or concrete cross-border issues.

The 'Better Regulation Agenda' and its working methods must respect the principle of subsidiarity, not only by considering whether issues can be more effectively dealt with by the

Member States through regulation or by social partners through collective agreements, but also by considering the cost of non-Europe. The Commission must abandon the idea that less regulation generates savings. In the same way as EU regulation may result in justified costs, inaction from the EU may result in additional costs or lost opportunities.<sup>4</sup> The absence of EU regulation may well hamper the functioning of the internal market. Scrapping one piece of EU legislation entails the risk of seeing 27 national regulations emerge, rather than any major gains in terms of cost or burden reduction.

### **iii) Proportionality guiding the assessment of net benefits and necessary regulation**

The principle of proportionality governs how the Union may exercise its legislative competences. Accordingly, the content and form of EU action shall not exceed what is necessary to achieve the objectives set out by the Treaties. Clearly, regulatory costs are far from the only aspects to consider when determining whether a relevant piece of EU regulation is proportionate, and definitely not among the objectives identified by the Treaties.

To ensure that EU regulation is necessary, justified, and proportionate, the 'Better Regulation Agenda' must be revised with a qualitative focus on net benefits rather than quantifying costs. Costs and burdens cannot be properly assessed without putting them in relation to the advantages they bring. In order for a measure to be considered proportionate, the benefits it generates must be greater than the disadvantage it gives rise to, be the benefits monetary or unquantifiable, material or intangible, as long as they serve the objectives of the EU and deliver for all. Conversely, a thorough impact assessment must equally be conducted for any potential repeal, to avoid unexpected consequences and undesirable effects.

In line with the principle of proportionality, it must be assumed that a burden or a cost is justified by a particular reason, such as stimulating a desirable behaviour or societal change. Regulatory burdens and costs are as such inherent to any legislative system and legal order. A regulation may be perceived differently depending on whether it is supported by business, workers, or society as a whole. Different actors may consider the same piece of regulation burdensome or beneficial, depending on whether it results in rights or obligations for them. The fact that one stakeholder considers certain regulations unnecessary does not necessarily mean that their existence is unjustified or disproportionate in light of the general interest. What one business may consider as decreased earnings can be seen by society as an investment in social justice.

Any quantified reduction targets express an overreliance on income as a measurement for benefits and satisfaction. At the same time, such targets assume the existence of a baseline point of reference, which is particularly problematic to envisage when it comes to the *acquis communautaire* of an ever-closer Union. This book-keeping approach risks becoming even more complicated considering that the 'one in, one out' logic is supposed to function within one and the same policy area, although it is unclear how different kinds of burdens, costs and benefits could be calculated, weighted and compared in order to allow for equivalent compensation. Furthermore, it must be assumed that any new EU regulation counts as necessary, and thereby also replacing any old unnecessary EU regulation. In any case, there cannot possibly be an unlimited stock of superfluous regulation and costs, especially given that the Commission claims to have successfully pursued its reduction efforts in terms of regulatory burdens and costs since 2012.

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<sup>4</sup> See e.g. European Parliament (2019): *Mapping the costs of non-Europe 2014-2019*. European Parliamentary Research Service, 2019. [Link](#).



## **VI. Regulation promoting the fundamental objectives of the EU**

The objectives of the EU are set out in Article 3 TEU, according to which the Union “shall work for the sustainable development of Europe based on balanced economic growth and price stability, a highly competitive social market economy, aiming at full employment and social progress, and a high level of protection and improvement of the quality of the environment.” Similarly, Article 9 TFEU states that “In defining and implementing its policies and activities, the Union shall take into account requirements linked to the promotion of a high level of employment, the guarantee of adequate social protection, the fight against social exclusion, and a high level of education, training and protection of human health.” This horizontal social clause is a major obligation which weighs on the EU and therefore also on the European Commission in the exercise of its powers.

The overarching objectives of the EU must be respected and promoted across all policy areas when the Union exercises its competences. Coupled with effective enforcement, high common standards pave the way for a level playing field characterised by fairness, legal certainty, and effectiveness. In this regard, competitiveness is far from the only objective that needs to be safeguarded by the Union when pursuing its policies.

### **i) Sustainability must come first**

Sustainable development lies at the heart of the EU and the Treaties, recognising the need to tackle the economic, social, and environmental dimensions together instead of seeing them as opposite and competing interests. Inclusive sustainability considerations should be mainstreamed across all policy areas. Societal development must meet the needs of the present without compromising the ability to also meet any future needs.

The ‘Better Regulation Agenda’ must be revised by putting sustainability first. Its toolbox should comprise a requirement to mainstream sustainable development considerations throughout all stages of EU policymaking and the legislative process. Each new EU initiative needs to be able to demonstrate how it contributes to the achievement of objectives such as the Sustainable Development Goals, the European Green Deal, and the European Pillar of Social Rights.

Putting sustainability first means considering the medium and long-term perspective, seeing regulation as an investment rather than as a short-term cost. Impact assessments should focus not only on relevance and cost-benefits analysis, but should also evaluate economic, social, environmental, and territorial impacts of regulation.

Sustainable law-making requires a robust evidence-base and precaution. The precautionary principle is enshrined in the Treaties (notably Articles 191 and 193 TFEU) to guarantee people security, health, and rights. It invites the EU and its Member States to proceed cautiously, in particular when there is no scientific consensus to support certain policies. The ‘Better Regulation Agenda’ should safeguard this fundamental principle and objective. While innovation can drive progress, it can also be disruptive. Therefore, innovation must not be used as an argument to set aside the fundamental values, principles, and objectives of the Union or undermine their effective enforcement. As the EU legal order does not recognise innovation as a legal principle, prioritising innovation over precaution cannot be legitimately justified.

Similarly, the ‘strategic foresight’ dimension of the revamped ‘Better Regulation’ toolbox must not become a renewed attempt to strengthen innovation at the expense of the precautionary principle. Its analysis and implementation must be proportionate and give due regard to the general interest, including the need to also address social challenges and trends. Making sure

regulation is fit for future, above all entails ensuring its economic, social, and environmental sustainability.

## **ii) Standard setting for fair competition and legal certainty**

The EU objective of improving the well-being of its people can only be reached by quality legislation and high standards. Indeed, the EU is globally known to have some of the highest standards in the world in terms of rights and protection. Admittedly, this also has a price. An excessive fixation on burden and cost reduction risks blurring the focus of the public discussion on what EU regulation brings in return to society and its people.

The 'Better Regulation Agenda' must get rid of the idea that competitiveness can only be built on simplification, less regulation and by removing regulatory costs. The relaunch of REFIT in the shape of a Fit for Future Platform should deliver less 'business as usual' and ensure a more balanced composition with a more holistic understanding of what makes regulation fit for purpose and for whom.

Competitiveness must never be built on lowering standards, as this will only result in a race to the bottom, taking forms such as social and environmental dumping. In fact, unfair competition constitutes one of the greatest obstacles to genuine competitiveness, including for SMEs. Exceptions from regulation to the benefit of SMEs do not stimulate competitiveness, but rather risk creating double-standards and favouring the entry of rogue competitors into the market.

In this regard, it must be recalled that EU regulation such as harmonisation or mutual recognition can represent an added value by streamlining legal, technical, and administrative requirements among Member States rather than adding new ones. However, promoting competitiveness, economic growth, business opportunities and employment creation requires a more holistic approach where due account is taken of the general interest, including the interests of workers.

Common standards have the potential of promoting fairness, legal certainty, and transparency. They may prevent regulatory competition between Member States as well as between the EU and third countries. Creating a level playing field promotes the general interest and paves the way for sound and sustainable competition with full respect for economic, social, and environmental requirements.

## **iii) Enforcement ensuring compliance and effective regulation**

Enforcement is key to uphold the rule of law, ensuring the effective application and compliance with the law. Without efficient monitoring and controls, quality legislation loses its *effet utile*. At the same time, any attempt to cut costs or reduce regulatory or administrative burdens risks having detrimental effects on the effectiveness of the law. Effective EU law requires a shared commitment between the Union and its Member States. Rights and protections under EU law are only as strong as their enforcement. A lack of compliance undermines not only the level playing field but also the fundamental objectives the Union.

The 'Better Regulation Agenda' must be transformed to promote regulation that stands for quality, fairness, legal certainty and effectiveness. To achieve this, it also needs to be revised with an increased focus on improved enforcement and compliance with the law. Simpler rules are not necessarily easier to apply or cheaper to monitor. In fact, compliance costs are difficult to anticipate, as they are dependent on enforcement structures, which may be particularly diverse within the European multi-level governance system. For instance, contrary to environmental initiatives, compliance costs of occupational health and safety regulation have rarely been estimated in the Commission's impact assessments. Conversely, completely

ignoring the costs of enforcement would make any kind of cost-benefit calculation of different scenarios available even less reliable.

In the end, the actual efforts of estimating the costs and burdens by themselves is a costly and burdensome exercise for the Union, its Member States and other stakeholders. Ultimately, less could mean more bureaucracy, poorer quality, less predictability, unfair competition, and ineffective enforcement. Such an approach risks undermining the general interests as well as the legitimacy of the European project as a whole. Therefore, the EU deserves a 'Better Regulation Agenda' that delivers for all.

## ANNEX

### **Background, development and political context of the ‘Better Regulation Agenda’ and the ‘one in, one out’ approach**

In 2012, the European Commission concretised its burden reduction efforts in the form of a ‘Better Regulation Agenda’, whereby an impact assessment system was mainstreamed throughout the policy cycle, from the design of legislation to its implementation, enforcement, evaluation and revision. Since 2015, the Regulatory Scrutiny Board as an independent expert panel is tasked with providing quality control of draft impact assessments, fitness checks and major evaluations of existing EU legislation elaborated by the Commission services.

The Juncker Commission 2015-2019 further politicised the ‘Better Regulation Agenda’ by placing an emphasis not only on regulatory and administrative burdens, but also attempting to quantify their costs. This approach has resulted in an exaggerated rhetoric according to which any piece of legislation is deemed an obstacle to growth, competitiveness, employment and SMEs, in particular with the introduction of a mandatory SMEs test.

In parallel to its ‘Better Regulation Agenda’, the Commission in 2010 established its Regulatory Fitness and Performance Programme (REFIT). In 2015, the REFIT Platform was established under the chairmanship of Commission First Vice-President Fran Timmermans. This platform comprised a panel of stakeholders and civil society representatives tasked with identifying regulatory and administrative burdens to be scrutinised across the entire EU *acquis*, including its implementation at national level.

The ETUC criticised the composition of the platform from the beginning, since only one out of the 18 members represented workers’ interests. Very few represented other parts of civil society, while business interests predominated. The REFIT Platform was used by several business groups to present proposals that – had they not been rejected – would have harmed the protection of the health and safety of workers and citizens.

The Commission’s evaluation of the ‘Better Regulation Agenda’ in 2019 revealed substantial room for improvements in particular concerning the lack of balanced representation of stakeholders, demonstrating little added value of the opinions for ‘making EU law simpler, less costly and future proof’.<sup>5</sup>

In 2020, the Commission launched a revamped REFIT initiative in the form of a Fit for Future Platform, which very much resembles the old one. The ETUC has nominated candidates to join the new platform in the expectation of a more balanced representation to be able to advocate for quality regulation that delivers for all.

For autumn 2020, the von der Leyen Commission has announced a revamped ‘Better Regulation Agenda’. Without evidence and despite recurrent criticism of the persistence to couple regulation with excessive costs and related burdens, the initiative is likely to maintain the objective of simplification of EU law by the removal of administrative and regulatory burdens and costs deemed to damage competitiveness, notably by the introduction of a ‘one in, one out’ approach.

Commission Vice-President for Interinstitutional Relations and Foresight Maroš Šefčovič in charge of ‘Better Regulation’ had, already at his hearing before the European Parliament on 30 September 2019, explicitly committed to “a clear ‘no’ to a mechanical approach and to

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<sup>5</sup> *European Commission (2019): Better regulation – taking stock and sustaining our commitment. 15 April 2019.*  
[Link.](#)

endangering EU high standards, especially social and environmental”.<sup>6</sup> Nevertheless, without having given any concrete assurances of how the ‘one in, one out’ policy could be considered compatible with social and environmental protection, Šefčovič still intends to go ahead with the announced initiative.

As an additional element in the ‘Better Regulation’ toolbox, Vice-President Šefčovič on 9 September 2020 announced that ‘strategic foresight’ would become part of the Commission’s impact assessments with the objective of providing a better understanding of possible future trends, scenarios and challenges. This ‘strategic foresight’ will be complementary to the Fit for Future Platform and support the Commission in its endeavour to identify “opportunities to reduce Europe’s regulatory burden and helps assess whether existing EU laws remain ‘fit for the future’.”<sup>7</sup>

The Competitiveness Council in its Conclusions of 27 February 2020<sup>8</sup> has expressed itself cautiously about the Commission’s intention to develop a ‘one in, one out’ instrument, choosing not to welcome but to merely take note of the ambition, highlighting that the “approach should not lower social and ecological standards, nor be applied in a purely mechanical way”. It “should go hand in hand with a qualitative approach, which entails a close dialogue with stakeholders” while “not weakening the objectives of concerned legislation” but instead “maximising the benefits of regulation for businesses and citizens”. The Council encouraged the Commission “to rely as much as possible on existing data and on its established Better Regulation tools to establish and operate such instrument avoiding any unnecessary burdens on Member States and stakeholders”.

Similarly, the European Parliament has regularly reiterated that ‘Better Regulation’ should adopt a more holistic approach, equally taking into account societal and public interests, quantifiable and non-quantifiable impacts. It should assess the benefits of regulation as much as the costs. In addition, the 2018 Parliament Resolution<sup>9</sup> on the Interinstitutional Agreement on Better Law-Making, clarified that “better law-making can, where appropriate, also mean more EU legislation, including harmonisation of disparities in national legislation, taking account of the benefits of legislative measures and the consequences of failure to act at EU level with regard to social, environmental and consumer protection standards, and bearing in mind that Member States are free to apply higher standards if only minimum standards are defined by Union law”.

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<sup>6</sup> *European Parliament Briefing: Commitments made at the hearings of the Commissioners-designate*. Brussels, November 2019, p. 25. [Link](#).

<sup>7</sup> *European Commission: Strategic Foresight Report 2020*, COM/2020/493, 9 September 2020, p. 4. [Link](#).

<sup>8</sup> *Council Conclusions on Better Regulation ‘Ensuring competitiveness and sustainable, inclusive growth’*, 27.2.2020. [Link](#).

<sup>9</sup> *European Parliament Resolution of 30 May 2018 on the interpretation and implementation of the Interinstitutional Agreement on Better Law-Making (2016/2018(INI))*, § 99. [Link](#).