

Reforming EU legislation: better processes, less burden

Position paper on the European Commission's planned communication on better regulation

This document has been machine-translated from German. The original version is available [here](#).


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Summary

The European single market is disproportionately burdened by overregulation. The competitiveness of the economy must be strengthened by accelerating the reduction of bureaucracy. It is essential to systematically reduce the burdens both in the EU legislative process and in the outcome. The potential impact on businesses in the internal market must be better assessed and evaluated in advance by the European Union (EU) legislators. Without this overall view, comprehensive bureaucratic requirements imposed by individual directives and regulations or the cumulative effects of parallel legislative acts lead to incalculable consequences for competitiveness, jobs and prosperity in Europe. Better regulation does not mean deregulation at any price. It is crucial to design the legislative process in such a way that unnecessary or disproportionate reporting requirements are avoided. The following steps are necessary throughout the legislative preparation, negotiation and implementation phases:

Preparation phase:

- In future, new legislative acts should only be proposed if they are proportionate and necessary. The better regulation guidelines must be applied consistently.
- The Commission and the co-legislators must realign their approach when revising the Interinstitutional Agreement on Better Lawmaking.
- The Commission must conduct better, more coordinated and more transparent consultations. Social partners should be given special consideration and be more closely involved in purely economic legislative projects.
- Impact assessments must be reformed and made mandatory for all legislative proposals. They should be applied without exception to all legislative proposals, including delegated acts.
- Competitiveness checks must be improved, and the recommendations of the Regulatory Scrutiny Board must not be ignored.
- The principle of subsidiarity must always be upheld, and national controls must be effectively enforced.
- The principles of "one in, one out" and "think small first" must be applied consistently.
- Existing legislation must be consistently reviewed with stress and reality checks to prevent or eliminate disproportionate and unnecessary burdens.
- The EP must justify EU action in its legislative initiative reports, including impact assessments and an analysis of cumulative effects.

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- The co-legislators must apply their democratic control rights more specifically to delegated acts.

Negotiation phase:

- The Commission and the co-legislators must make trilogue negotiations more transparent, update impact assessments in the event of significant changes to the legislative proposal and ensure better access to documents.
- The Commission must withdraw legislative proposals whose consequences can no longer be controlled due to changed circumstances.

Implementation phase:

- In the event of implementation problems, deadlines for Member States must be made more flexible if necessary. The Commission should take a step-by-step approach to infringement proceedings and make use of informal dialogue processes in the preliminary proceedings.
- Member States should always avoid gold-plating and give companies sufficient time to implement legal obligations.
- Compliance with EU legislation must be made easy for companies, for example through digital tools.
- The EU legislator must abolish the so-called prohibition of deterioration.

In detail

Preparatory phase for new EU legislation

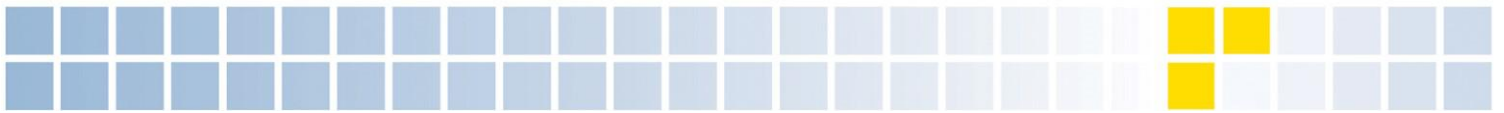
Break the general tendency towards new EU legislation

More must be achieved through other forms of European action, such as through specialist EU administrative commissions (e.g. in social security law) or through non-legislative initiatives (e.g. within the framework of the European Semester). These make use of existing expertise, reduce bureaucracy, promote the autonomy of Member States and are flexible. A new EU legislative act is not automatically the best solution. Effective law enforcement often fails at Member State level because different implementations fragment the internal market and distort competition. New legislation that is not effectively monitored does not remedy the situation. The principle of proportionality must be strictly observed in all legislative projects. Only proportionate and reasonable regulations may become part of the EU acquis. The Commission should conduct a more rigorous self-assessment of its work programme and the legal basis for legislative projects with regard to its policy priorities.

Revise the Interinstitutional Agreement

The EP and the Council should further develop the Interinstitutional Agreement on Better Law Making (IIA). The institutions repeatedly disregard key aspects of the agreement, for example with regard to impact assessments by the Council and the Commission and the lack of transparency in the trilogue procedure. The revision should focus on extending the scope of impact assessments, transparency throughout the legislative process, rules for dealing with delegated acts and implementing acts, and the establishment of a permanent, publicly accessible forum to monitor the implementation of the IIA. An EP-Intergroup on better regulation could be a suitable approach for this.

Consistent application of better regulation guidelines



The guidelines on better regulation must be applied consistently. This would ensure the use of simplified language and structure in legal acts. Restricting the scope and consolidating legal acts (e.g. the Display Screen Equipment Directive and the Workplace Directive) could reduce overlaps and multiple regulatory burdens. A clearly structured set of rules facilitates application, control and implementation.

Improve consultations

Consultations must be better coordinated within the Commission and focus on gathering truly relevant information. Cross-policy initiatives – such as those on competitiveness, digitalisation or the impact on SMEs – require bundled and early consultations to avoid multiple surveys and administrative burdens as far as possible. Companies – especially SMEs – need standardised and modular consultation processes. In addition, guiding questions should be avoided, evaluations should be published transparently, and automated responses should not be weighted equally with expert contributions that potentially speak on behalf of millions of companies. Clear feedback from the Commission increases the acceptance and quality of legislation.

Strengthen social partner consultations

The Commission should take greater account of the special importance of social partner consultations. Their contributions must be given separate recognition and dissenting opinions must be presented appropriately. Especially in policy areas without a primary social dimension (e.g. competition law, digitalisation), it is important to involve the social partners at an early stage to realistically assess the impact on the labour market and businesses.

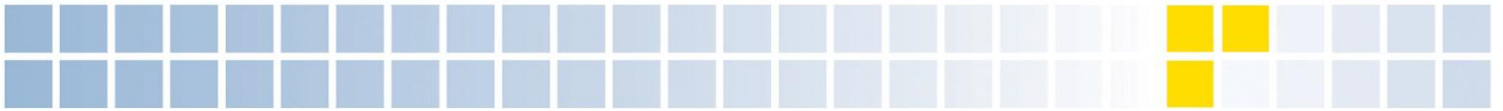
Reform impact assessments

Robust impact assessments are needed to ensure high-quality legislation. Only then policy objectives, economic impacts and administrative burdens can be weighed up in an informed manner. They must be carried out for all Commission proposals without exception and updated in the event of substantial amendments during the legislative negotiations. Particular attention must be paid to the impact on competitiveness, SMEs, administrative burdens on businesses and the cumulative effects of the existing regulatory framework. The Commission should make greater use of existing data from evaluations, EU agencies and national implementation reports. AI-supported analysis tools can identify and close evidence gaps. Experience in recent years – for example in connection with the Corporate Sustainability Reporting Directive (CSRD) – shows that the impact assessments submitted have often been significantly underestimated.

Improve the competitiveness check

The impact on international competitiveness and innovative strength must be examined much more closely, as it is often assessed as neutral in a blanket manner or without justification. There are a lack of reliable quantitative analyses and an international comparative perspective. Indirect and long-term effects on innovative strength – for example, due to administrative burdens or prolonged procedures – are not sufficiently considered. This requires greater interservice cooperation within the Commission so that the check is not just a mere "tick-the-box exercise", the involvement of relevant market actors, consideration of cumulative regulatory burdens and the application of competitiveness checks to strategic programme planning.

Take the Regulatory Scrutiny Board (RSB) seriously



The Commission should always follow the RSB's assessments and extend its remit to include cumulative effects of related legislative acts. The Regulatory Scrutiny Board reviews impact assessments and makes recommendations before a legislative act is adopted. In the past, the Commission has repeatedly ignored recommendations and presented proposals despite serious concerns. Examples of this include the Corporate Sustainability Due Diligence Directive (CS3D) and the Pay Transparency Directive. This failure to take RSB recommendations into account has repeatedly led to excessive burdens on businesses.

Upholding the principle of subsidiarity

Every legislative proposal must provide a clear and detailed justification of why action by the EU – and not by the Member States – is necessary. General statements such as "harmonisation is necessary" are not sufficient. Instead, it must be specifically explained why EU action is more efficient and effective than national measures – for example, due to cross-border effects or demonstrably inadequate Member State solutions – including an analysis of the problem and alternatives.

Strengthen national subsidiarity control

Binding revision obligations following a "yellow" or "orange" card must be introduced. Currently, the Commission is obliged to examine the objections of national parliaments, but it is not required to make any specific changes to the legislative proposal. This weakens an effective early warning system. National parliaments should also be granted longer deadlines for subsidiarity checks. The current deadline of eight weeks is too short to thoroughly analyse draft legislation, consult with stakeholders and prepare well-founded opinions. Without sufficient time, control remains a mere formality.

Applying the "one in, one out" principle in practice

Newly introduced burdens must be offset elsewhere. The principle must apply without exception to all EU policy areas. Exceptions to the scope of application should be as narrow as possible. The implementation of the "one in, one out" principle is progressing slowly. In 2022, the principle was applied to only 52 of 102 legislative proposals, and potential savings were identified in only 30 of them. Consistent application of the "one in, one out" principle would significantly reduce the net burden on businesses. Regular evaluations and fitness checks are necessary to systematically review existing legislation for its effectiveness, proportionality and relevance. This allows outdated, inefficient or overlapping requirements to be identified and eliminated. This is the only way to prevent administrative burdens from accumulating and permanently overburdening businesses.

Apply the 'think small first' principle

The Commission must ensure that SMEs are systematically involved in consultations, evaluations and impact assessments. This includes sufficient consultation periods, a clear presentation of the impact on SMEs, differentiation according to size classes and consideration of indirect burdens. The SME test should be applied strictly. SMEs account for 99.8% of businesses in the EU and employ around two-thirds of the workforce. Nevertheless, the perspective of small and medium-sized enterprises is often not sufficiently taken into account in the legislative process. Due to limited financial and human resources, SMEs are particularly vulnerable to additional regulatory burdens. They are often affected indirectly by EU legislation via their supplier relationships, for example in the context of the Taxonomy Regulation or the Supply Chain Directive.



Consistent use of stress tests and reality checks

The Commission should consistently review the EU acquis for burdens, conflicting objectives and implementation problems. In particular, reality checks from business practice – especially from SMEs – are important for realistically assessing practical hurdles. Only through consistent implementation can genuine simplifications be achieved.

Better justification of European Parliament legislative initiative reports

As with Commission proposals, the EP's legislative initiative reports should include a justification for EU action, a full impact assessment and an analysis of cumulative effects. So far, they have potentially led to more legislation without systematically checking whether subsidiarity is respected, whether they are proportionate and whether they place an additional burden on businesses. This was the case, for example, with the Sustainability Reporting Directive (CS3D) and the European Works Council Directive. This encourages overregulation and unnecessary bureaucracy.

Monitoring delegated acts

The EP and Council should monitor delegated acts regularly and in a targeted manner. Delegated acts should also be subject to impact assessments, as they often create significant burdens, e.g. European Sustainability Reporting Standards (ESRS). Democratic control must not be undermined by the ever-increasing number of delegated acts.

Negotiation phase of the EU co-legislators

Making trilogue negotiations more transparent

Trilogue negotiations must become more transparent. The public should have timely access to ongoing trilogue negotiations and results. Currently, documents are often only published weeks after political agreements have been reached. This makes EU legislation difficult to understand and lacks transparency. Early publication would build trust and enable stakeholders to make an informed assessment.

Conduct impact assessments for trilogue results

If the content of the legislative text deviates significantly from the original Commission proposal, a new impact assessment must be carried out. This requires general and transparent criteria for defining a 'substantial amendment'. Such criteria would create legal certainty and clarity as to whether changes to the legislative proposal have additional effects beyond those already identified in the impact assessment. Only a new impact assessment will make it possible to avoid unintended economic and administrative consequences at an early stage.

Ensuring access to documents

EU Regulation (EC) 1049/2001 on public access to documents must be revised in line with the latest ECJ case law, including for documents outside the narrow scope of specific legislation. In several judgments (e.g. C-280/11 P), the Court of Justice has emphasised that transparency is a fundamental principle of the EU and that exceptions to access to documents must be interpreted narrowly. Nevertheless, many internal and preparatory documents remain inaccessible, delayed or only accessible to a very limited extent. Greater transparency strengthens democratic control and acceptance.



Withdraw legislative proposals if necessary

As a last resort, the Commission should withdraw legislative proposals. According to Article 293(2) TFEU, it may amend its proposal as long as no decision has been taken by the Council; according to ECJ ruling C-409/13, this also applies to the complete withdrawal of the Commission's proposal. The Commission must make more frequent use of this option, especially when the circumstances under which the proposal was made have changed completely and the consequences of the legislation are therefore uncontrollable.

Implementation phase at national level

Flexible handling of national implementation deadlines

In the case of complex or particularly burdensome legislation, longer implementation deadlines should be allowed. This can be achieved by adjusting the deadlines in a new legislative act or by introducing individual obligations in stages (e.g. Regulation on Artificial Intelligence (AI Act)). Implementation at too short notice regularly leads to excessive burdens, especially for SMEs, as they are unable to cope with new legal and technical requirements without increased compliance costs due to limited financial, human and organisational resources.

Targeted use of infringement proceedings

The Commission should make use of its options for a gradual approach in infringement proceedings (Article 258 TFEU), e.g. informal dialogue processes in preliminary proceedings or deadline extensions if economic hardship at companies delays implementation. A flexibly conducted procedure can avoid unnecessary additional burdens on companies, such as financial sanctions, increased administrative and legislative pressure, and legal uncertainties in the national legal system.

Consistently avoiding gold-plating

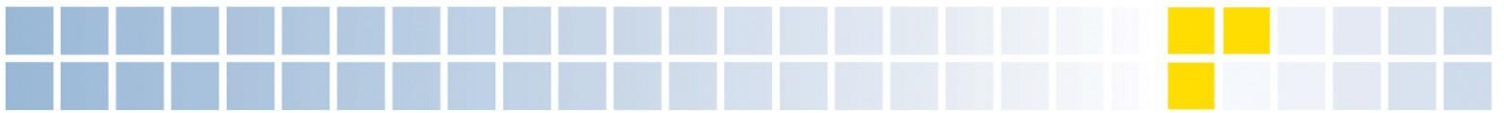
Member States should refrain from imposing additional national requirements when implementing EU legislation. This so-called gold-plating is a key driver of unnecessary bureaucracy and leads to competitive disadvantages.

Gold-plating: Less flexibility for businesses

The implementation of the Working Time Directive in Germany shows that Member States can go beyond the minimum requirements of EU law by imposing additional national requirements, such as limiting the maximum daily working time to eight or ten hours with compensation, compared to the Directive, which only provides for a weekly working time limit. This reduces flexibility for companies and can lead to competitive disadvantages compared to companies in Member States with more restrained implementation.

From 2021 to mid-2024, three regulations and nine directives were implemented in Germany that went beyond the minimum requirements of EU law.¹

¹ German Bundestag, Press release of 15 July 2024, 'Gold-plating of EU directives and regulations', available in German at <https://www.bundestag.de/presse/hib/kurzmeldungen-1013116> (last accessed on 3 February 2026).



Give companies sufficient time for implementation

National legislators should not wait until shortly before the implementation deadline to implement EU legislation. In practice, this leads to reduced preparation time, increased implementation costs and legal uncertainty for companies. Early implementation allows for practical preparation and significantly reduces the burden on businesses.

Facilitate compliance

For practical implementation, the following should be introduced: EU-wide implementation guidelines, digital compliance checklists and mandatory interoperable reporting systems (once-only principle, technology-neutral verifications). The standardisation of digital processes reduces costs and errors and makes it much easier to fulfil obligations.

Abolish prohibitions on deterioration

When EU legislators adopt new directives or revise existing ones to simplify the acquis, Member States should not be prevented by so-called prohibitions on deterioration from adapting their national legislation in a meaningful way. This is the only way to achieve a truly simplified and modern acquis.

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As an umbrella organisation, the BDA represents the social and economic interests of the entire German economy. We bring together the interests of one million companies with around 30.5 million employees. These companies are affiliated with the BDA through voluntary membership in employers' associations.

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