

# 'One in, one out', an incongruous approach to the major European challenges

Éric Van den Abeele

---

## Éric Van den Abeele

is senior lecturer at the University of Mons-Hainaut, Visiting professor at the IHECS (Brussels) and associate researcher at the European Trade Union Institute.

## Policy recommendations

- The costs and burdens that go hand-in-hand with legislation (taxes and charges, monitoring and evaluation reports, statistics, labelling, etc.) are an intrinsic part of the democratic system. If they are abolished, this should be on the basis of a case-by-case assessment, not a bookkeeping approach.
- Regulatory power, the new forms of standardisation and the strategy of systematically circumventing international rules by China and certain third states are a higher priority than the 'one in, one out' (OIOO) approach.
- Internally, a more urgent imperative is to reform the impact assessment system for European regulations and the consultation of stakeholders and the social partners.
- If the 'one in, one out' approach is implemented, there will need to be non-regression testing when any substantial burden is removed in the environmental, social, health and employment sectors.

## Introduction

Do regulations and standards in general represent a brake on innovation and hinder the competitiveness of businesses? Yes, for Germany and some other Member States, and for the industry federations (Business Europe) and the big multinationals, who are increasingly calling for a dramatic reduction in the European Union's regulatory and administrative burden.

Until now, however, the Commission has withstood the repeated calls to systematically introduce a bookkeeping method with neutral effects in terms of regulatory and administrative obligations.

However they might deny it, detractors of European legislation and 'hard law' are aiming to prioritise more flexible, less stringent instruments, supposedly to respond to the demand for innovation and progress in digitalisation and the need to adapt more readily to competition from America and China.

Introduced at the request of the President of the Commission, Ursula von der Leyen, the 'one in, one out' (OIOO) approach will become a key axis of European Union (EU) policy from 2022 onwards.

This principle consists in offsetting the new burdens arising from the Commission's legislative proposals with an equivalent reduction in burdens already existing in the same policy area.

Postponed several times, it was almost 18 months before the Commission President's policy announcement found its practical expression. On 29 April 2021, the College of Commissioners finally adopted a long Communication, which buried the OIOO approach in 'new instruments for further simplification and burden reduction' amidst other announcements about stakeholder consultation, transparency and improvement of the toolbox.

At the same time as the 'one in, one out' Communication came out, the packages of proposals implementing the 'European Green Deal' and 'Fit for 55', the digital transition, mobility and transport and the various texts on relaunching the EU were adopted: dozens of legislative and non-legislative acts that were about to swell the *acquis communautaire* with new obligations for businesses, public authorities, stakeholders and citizens.

With these new regulations adding extremely demanding responsibilities to those already in force, it is somewhat paradoxical that the Commission is communicating that, as from 2022, any new obligation will have to be offset.

## Copernican revolution or 'business as usual' evolution?

In its Communication of April 2021, the Commission states that 'the approach will widen the focus from burdens stemming from specific legislative acts to the accumulation of burdens in each policy area' (p. 10). The costs incurred by enterprises and citizens for information, registration, monitoring and control are explicitly mentioned.

'We will not apply the approach mechanically,' says the Commission, which instead seeks to 'offset the burdens (...) with savings in others in the same policy area' (p. 11).

The Commission has set up three types of arrangements backing up its approach, to make the system more ‘dynamic’:

- Flexibility within the reporting period – if an ‘out’ cannot be identified in the same year’s work programme, it will be reported in the next year;
- ‘Trading’ in certain exceptional circumstances across policy areas – if it is not possible to find an ‘out’ in the same area, the Commission can decide to take the ‘out’ from a different policy area;
- Exemptions in certain exceptional circumstances – if there is political will to regulate but it is not possible to identify an offset in the same area, the Commission can decide to exempt the regulation.

The Commission will begin piloting the approach in the second half of 2021 and will start implementing it with the Commission Work Programme 2022.

Reducing burdens might take several different forms:

- Using digital tools to reduce certain kinds of burdens or obligations;
- Grouping several legislative texts together in a single volume;
- Combining reports, statistics and consultation mechanisms relating to several legislative acts from a single policy area to produce a single obligation;
- Making certain burdens optional, abolishing their obligatory nature;
- Removing the responsibility for certain obligations from companies and some stakeholders and placing it on the public authorities;
- Giving priority to regulations over directives because of their immediate effect for all parties;
- Replacing the legislative approach by increased recourse to alternatives to regulation.

## **The initial reaction of the two sides involved**

At this stage, neither the Council nor the European Parliament has yet adopted an official position on the Commission’s approach. There has been nothing more than some initial sparring in the European Parliament’s JURI Committee on 8 June 2021 and in the Council’s Better Law-Making Working Group on 9 June 2021.

The approach has been received in very different ways by the Member States, but a strong critical tone seems to be emerging from the two sides for opposite reasons.

On the side of those who, for many years, have been arguing in favour of regulatory offsetting – first and foremost Germany, followed by the Netherlands, the Nordic countries (Denmark, Sweden and Finland), Spain, Poland, Czechia, Hungary, Ireland, Latvia, Estonia, Croatia and Malta – it was a big disappointment: ‘too little, too late’.

On that side of the table, three points were criticised:

- This approach would be inoperable in practice, because of the flexibilities and possible exemptions introduced into the system (see above);
- The scope covered by the method did not encompass all the costs of conformity, namely the internal costs, such as wages and overheads

relating to any new regulations, and the external costs (scientific expertise, legal assistance, accounting support, etc.);

- The introduction of the approach in 2022, or indeed in 2023 if the pilot phase were extended, would mean that the system could not be applied to the 'Fit for 55' legislative package or, among others, the digital and mobility packages, in other words the main bulk of the von der Leyen Commission's legislative proposals.

On the other side of the table, the disappointment was more measured but very real. France, Luxembourg, Belgium and Bulgaria sometimes felt that the rot had set in. They feared that this approach would undermine the quality, consistency, legal certainty and predictability that should prevail when legislative acts are adopted. Control of costs and burdens is, admittedly, an important objective, but there should be greater focus on the benefits of a piece of legislation for the EU as a whole and on overall legal certainty.

The other Member States (Italy, Romania, Greece, Portugal, Austria, Slovakia, Lithuania, Slovenia and Cyprus) had a less clear-cut or more nuanced view, sometimes reflected in both of the positions present: reducing the regulatory burden without necessarily using the OIOO approach.

## **A short-sighted vision centred on financialising policy decisions**

The criticisms raised to a greater or lesser extent by the second group of Member States (Belgium, France and Luxembourg) may be grouped together as follows:

Firstly, in its concern to humour both sides, the Commission is echoing the premise of those who consider that the burdens arising from legislation should be reduced.

This standpoint is debatable, as the underlying logic is based on the idea that legislation generates unnecessary burdens and costs, without first noting that the purpose of legislation is to protect the European Union, its businesses and its citizens and to ensure overall legal certainty.

Indeed, regulations are, first and foremost, a powerful driving force for integration,<sup>1</sup> a factor of social and environmental progress helping to uphold the values of the Union, and also an efficient way of reducing the costs of non-Europe and combating the numerous fragmentations that undermine the internal market.

Secondly, at no time has the Commission defined what it understands by the term 'burden', which usually covers obligations for businesses, public authorities or citizens. By drawing no distinction between 'useful', entirely justified obligations – such as the obligations placed on the GAFAM companies – and redundant, annoying or unnecessary burdens, the Commission has missed an opportunity to ensure that the debate is based on objective considerations.

Thirdly, the Commission presents regulatory offsetting as a 'business as usual' adaptation of its working methods, whereas in actual fact the approach has introduced a kind of Copernican revolution in Community methods. In so

---

<sup>1</sup> See Bradford 2020. We would also mention Zaki Laïdi, for whom norms are the EU's only major policy resources and the only ones that give the EU its 'power' (Laïdi 2013).

doing, it marks a break in the legislative continuum, which is precisely the main objective sought by Germany and its associates, contriving that stakeholders, and in particular the employers' federations and the powerful industrial lobbies, should be able to challenge, from the outset, the merits of a piece of legislation on the ground that it would increase costs for businesses.

## **A reversal that smacks of ideology**

The introduction of the 'one in, one out' approach is the story of a policy reversal that is as surprising as it is worrying. The Juncker Commission and its administration (with its powerful Secretariat), tasked with evaluating the OIOO approach, found the OIOO principle to be inappropriate, preferring a 'case-by-case' approach after in-depth examination.

In deciding to reverse the position, the von der Leyen Commission is officially recognising the failure of the Regulatory Fitness and Performance Programme (REFIT), which had the objective of identifying the regulatory dead wood, so that this could be taken out. Since 2012, the Commission has been screening the *acquis communautaire* to identify duplications and unnecessary or harmful burdens. From this screening process, numerous unnecessary burdens have been removed in the course of successive reviews of the EU *acquis*.

## **A political UFO in the Union's legal skies**

The introduction of the OIOO approach raises questions of a constitutional and institutional nature.

### **Dubious nature of the 'one in, one out' approach under the Union treaties**

Under Article 17(1) of the Treaty on the Functioning of the European Union (TFEU), 'the Commission shall promote the general interest of the Union and take appropriate initiatives to that end'. This makes the Commission the guarantor of the *acquis communautaire*. The unilateral decision to introduce an almost automatic mechanism that removes from the *acquis* parts of legal acts that are deemed too cumbersome or too costly, even though they were adopted by joint decision with the European Parliament, representing European citizens, and the Council, representing the Member States, therefore affects its role as a guardian of the EU's secondary legislation. The *acquis communautaire* is the EU's 'regulatory repository'. The fact for the Commission of having to scrap swathes of regulations to make way for new rules is a form of breach of the EU's interinstitutional agreements.

Before rolling out the OIOO approach, the Commission should, as a minimum, undertake a prior assessment of the impact of the legal consequences of introducing this systematisation, following wide consultation and amendment of the 2016 Interinstitutional Agreement on Better Law-Making.<sup>2</sup> The case could even be referred to the Court of Justice of the EU.

---

<sup>2</sup> Interinstitutional Agreement of 13 April 2016 'Better Law-Making'.

## **New red tape to cut red tape in the Union**

To identify the existing burdens ('out') in order to make way for new burdens ('in'), the Commission will need to determine in advance which kind of burden should be eliminated and which type of burden should be kept. This portends difficult negotiations between Directorates-General, between units within a given DG and between institutions, given that there is always a justification for introducing a 'burden' – more often than not an obligation – whether it was introduced by the Commission or by the legislators for particular reasons.

In creating a rule that is tricky to implement, not very clear and not very transparent, the Commission is establishing a new form of non-transparent bureaucracy, because, paradoxically, the system requires new, intermediate, undemocratic layers to be introduced (committees of experts tasked with prior calculation of the 'in' and 'out' burdens, hatchet committee, etc.).

An initial, almost insurmountable difficulty will be the 'quantification' of burdens, as these can be qualitative or quantitative. How can a monetary value be placed on well-being, the benefits associated with environmental and social protection, the promotion of a high level of quality jobs, keeping global warming below two degrees Celsius, etc.? Should the immediate, medium-term or long-term cost be taken into account? How can obligations and burdens that are easily quantifiable be compared with those that are impossible or difficult to quantify?

Among the other risks, there is the very real possibility that certain parties may challenge the calculation of obligations falling to businesses. They may challenge whether a burden is unnecessary or not, or they may consider that the calculations to 'quantify' it do not sufficiently, if at all, take into account certain aspects or certain benefits (monitoring, steering, consultation, etc.). In short, there is a major risk that a battle will ensue among experts who will be more focused on discussing the quantification of burdens than any benefits they may have.

In addition to this, the fundamental question arises as to how the withdrawal of any burden or cost at issue will be organised.

- Will an impact assessment be required before the burden is withdrawn (as would be logical) to gauge any effect on a given target, territory or policy area?
- To which institution will the cost of this impact assessment fall: the EU's general budget or the stakeholders who asked for the burden to be removed?
- Will the withdrawal of the burden go through the routine procedure of two readings, or will a fast-track procedure be used for this purpose?

## **There are other, more urgent reforms than the 'one in, one out' approach**

Rather than the OIOO approach, other measures are emerging as more fundamental in response to recent developments in norm-setting.

## **Becoming a leader in standards**

Regulatory power, the new forms of standardisation and the strategy of circumventing the international rules by China and certain third countries, whether in terms of standards on trading (WTO), agriculture and public health (FAO and WHO), in telecommunications or electronic and electromechanical standardisation, have emerged as far more fundamental challenges.

Thus, China's wish to secure the position of Director-General of the United Nations Food and Agriculture Organization (FAO) for Mr. Qu Dongyu, in June 2019, to the detriment of the European candidate (the Frenchwoman Catherine Geslain-Lanéelle), was driven by Beijing's desire to influence the work of the Codex Alimentarius, which is concerned with standards and guidelines for international trade in food products (Abis 2020).

## **Improving impact assessments**

Now more than ever, the impact assessment for substantive proposals by the Commission needs to be reformed. Generally lengthy and full of bibliographical references, this technical document is less an instrument designed to facilitate the understanding of a legal act and more a way for the Commission to justify the technical and legal bases for its legislative proposal. It would be preferable if the impact assessment of a proposal were able to provide the legislators and stakeholders with a smart matrix for dynamic simulation to help the legislators to foresee the potential impact of their amendments.

## **Improving stakeholder consultation**

As the Commission acknowledges, stakeholder consultation should be more effective and should abandon binary logic to meet the needs and fulfil the requirements of the social partners and civil society.

## **The absolute minimum acceptable**

If the 'one in, one out' system were to be introduced, this approach would still need to be clearly delimited, over and above the three arrangements provided by the Commission (see above).

## **Introducing an anti-regression lock**

The direct return for individual businesses from removing a burden is very low. By contrast, the elimination of certain obligations that hinder competitiveness could destabilise the governance of the EU and prove detrimental to certain policies, in particular environmental and social policies.

What 99% of small and medium-sized enterprises (SMEs), and also the social partners, are calling for are, in addition to a reduction in administrative burdens, greater legal certainty and predictability, particularly in crisis

situations, consistency and transparency of regulatory texts, a high quality of European and national laws, accessibility of information in real time and the opportunity to have a say in public consultations.

## **Opening a dialogue with the stakeholders and the Member States**

It is not always down to the European Union that there is duplication, pernicky bureaucracy, unjustified delays and additional costs to pay. The responsibility of Member States, which, justifiably, add certain requirements (statistics, satisfaction surveys, labelling, etc.), is also in play. The Member States must retain the right to add certain supplementary requirements if a piece of legislation is harmonised to a minimum extent, even if the structured dialogue between the EU and its Member States could do with improvement.

## **The ‘one in, one out’ approach on top**

Since the 2016 IIA, the regulatory landscape has changed massively. Under pressure from the stakeholders, in particular business federations, but also Member States such as the Nordic countries, Germany, the Netherlands, Austria, Czechia, Ireland, Estonia and Malta, among others, regulations have to meet three imperatives:

- be digital by default;
- be future-proof;
- be innovation-friendly.

On top of these three imperatives, which already aim to reduce the burden of regulations on citizens, businesses and the public authorities, comes the ‘one in, one out’ approach, which significantly reshapes relationships by limiting the capacity of the colegislators to add new obligations, seen as burdens that then have to be offset.

## **Conclusions**

The ‘one in, one out’ approach highlights the debate between two schools of thought. The first considers that European integration moves forward in normative terms by substituting one common rule for 27 existing rules. The second takes the view that the EU should develop in a more pragmatic and cost-effective way, by placing trust in digital technologies and concluding future-proofed agreements that promote innovation.

The elimination of an obligation does not immediately make money available to an individual business. What usually happens is that a burden is shifted from an operator to the authorities or the community.

There is only a small margin of available stock of easily identifiable unnecessary burdens that can be ‘extracted’ from the relevant EU regulations.

The Commission’s new ‘one in, one out’ approach in some ways confirms the stigma attached to the EU’s legislative work, by covertly implying that

the European institutions create unnecessary, burdensome obligations for businesses and the authorities.

In so doing, the message sent to the citizens and stakeholders is that the EU is a cumbersome, bureaucratic machine which is doing a bad job, at the very time when the process of Europe integration is being challenged by Eurosceptic and Europhobic populist parties.

Whereas the United Kingdom, a forerunner in the battle against bureaucracy, left the EU nearly three years ago, it is curious to see that other Member States, led by Germany, have taken up the cause of 'less lawmaking'.

Let us hope that the debate about the 'one in, one out' approach will bring out the only question worth asking: how overall security and protection, as well as justice and solidarity, can be improved through better integration of EU policies in a desire for efficiency.

## References

- Abis S. (2020) Chine, puissance normative, Institut des Relations Internationales et Stratégiques, 10 June 2020. <https://www.iris-france.org/147704-chine-puissance-normative/>
- Bradford A. (2020) *The Brussels effect: how the European Union rules the world*, Oxford, Oxford University Press.
- European Commission (2021) Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, Better regulation: Joining forces to make better laws, COM(2021) 219 final, 29 April 2021.
- European Parliament, Council of the European Union and European Commission (2016) Interinstitutional Agreement between the European Parliament, the Council of the European Union and the European Commission on Better Law-Making of 13 April 2016, Official Journal of the European Union, L 123, 12 May 2016, 1-14.
- Laïdi Z. (2013) *La norme sans la force. L'énigme de la puissance européenne*, Paris, Presses de Sciences Po.
- Van den Abeele E. (2020) 'One-in, one-out' in the European Union legal system: a deceptive reform? Working Paper 2020.04, Brussels, ETUI.
- Van den Abeele E. (2019) *The European Union versus the Better Regulation Agenda. Why the outcome depends on a paradigm shift*, Background analysis 2019.02, Brussels, ETUI.

ETUI publications are published to elicit comment and to encourage debate. The views expressed are those of the author(s) alone and do not necessarily represent the views of the ETUI nor those of the members of its general assembly.

The ETUI Policy Brief series is edited jointly by Nicola Countouris, Jan Drahekoupil, Philippe Pochet, Aída Ponce Del Castillo, Kurt Vandaele and Sigurt Vítols. The editor responsible for this issue is Philippe Pochet, [ppochet@etui.org](mailto:ppochet@etui.org)

This electronic publication, as well as previous issues of the *ETUI Policy Briefs*, is available at [www.etui.org/publications](http://www.etui.org/publications). You may find further information on the ETUI at [www.etui.org](http://www.etui.org).

© ETUI aisbl, Brussels, September 2021.  
All rights reserved. ISSN 2031-8782



The ETUI is financially supported by the European Union. The European Union is not responsible for any use made of the information contained in this publication.