



# REPROTECTING EUROPE

THE EUROPEAN GREEN DEAL  
VS THE WAR ON REGULATIONS

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## EXECUTIVE SUMMARY

**E**urope faces multiple environmental, social, and economic challenges. The European Council, representing the Member States, has endorsed<sup>1</sup> the Commission's commitment to becoming climate neutral by 2050 as part of the European Green Deal,<sup>2</sup> and the European Parliament has adopted a resolution declaring a climate and environmental emergency.<sup>3</sup> It seems very hard to conclude that this is a time when we need Europe to be focused on regulating less and reducing regulatory 'burdens' as a point of principle. But the deregulatory mindset that has taken hold of the European Commission over the last two decades is increasingly visible. Its agenda is rooted in ideology and has been pushed for decades by corporate lobbying as part of a desire to ensure that the costs of social and environmental damage are not the responsibility of those who cause it.

**Deregulation is a central plank of an ideological project to put the interests of (some) business over people and the planet.** It has been a central demand of big oil and cigarette companies for much of the 20th century, aided by free-market thinktanks. British American Tobacco, for example, directly lobbied for the introduction of the European Commission's 'Better Regulation' programme to hold off what they saw as an increasing threat to their business. Perhaps the gravest concern with the deregulation agenda is that it privileges business voices over others: not just consumers, but also over those far from the ear of regulators and elected politicians, or those with no voice or rights at all, such as animal species and habitats.

**The European Commission's Better Regulation programme is deregulation by stealth and needs to be reformed.** It has made it harder to get important new regulations off the starting blocks, tilted the emphasis of regulatory policy towards minimising the costs to business rather than effectively regulating in the public interest,

and subjected existing legislation to needless and unjustifiable review. It has introduced impact assessment methodologies that are biased towards evidencing the short-term compliance costs of businesses directly affected by regulation over the less easily quantifiable social and environmental benefits. There is very little 'better' about Better Regulation for most people or for sustainability, which is being given insufficient weight in policy assessment.

**The worst aspect of the deregulation drive is a chilling effect on regulating in the public interest.** The purpose of European regulation has been gradually reoriented away from principled and precautionary protection towards reducing regulatory burdens as an end in itself. There is a deep conflict between cutting regulations as a point of principle, and delivering a new Europe fit for the challenges of the 21st century.

**The latest threat is a proposed 'one in, one out' regime for European regulations** – under which no new regulation could be introduced, irrespective of social or environmental need, without removing an equivalent existing amount of regulation in the same policy area at EU level. This arbitrary and nonsensical approach was rejected for years by the previous Commission as putting ideology above the public good. Its application would directly clash with the far more important tasks of delivering on the sustainable development goals (SDGs) and the new European Green Deal, and re-energising the European project. It is not explicitly mentioned in the European Green Deal but remains in the mission letters to the commissioners. It should be rejected; experience from countries including the UK shows that such mechanical measures continue to escalate over time – the UK now has 'one in, three out'.

**It is crucial to maintain the 'precautionary principle' and to defend it from being undermined by the euphemistic 'innovation principle'.** Innovation is needed but within an overall policy framework guided by the public good; it is not an end in itself that is used as an excuse not to assess, manage, and mitigate risks to health, communities, or ecosystems.

**The European Commission must set a new priority for regulation before it is too late to deliver on the SDGs and to address crises such as the climate emergency, the biodiversity crisis, and risks to our health and the planet from chemicals and other pollutants.** This new approach should infuse the EU's approach to trade deals, regulatory policy, and enforcement.

The European Commission should:

- Translate the SDGs and European Green Deal commitments into concrete headline objectives for policy, and metrics for success for regulatory policy, in place of its current focus on reducing burdens.
- Proactively identify where new legislation or legislative tightening is required to drive the promised transformative change in the European Green Deal, to meet the needs of people and the planet, and to live up to the green oath to do no harm made in the European Green Deal.
- Overhaul its assessment toolkit to identify the need for action and the cost of inaction – to fill legislative gaps and/or tighten existing legislation before it is too late.
- Reform regulatory assessment processes around delivering on the European Green Deal and the SDGs, not evidencing burden.
- Scrap the 'one in, one out' proposal in the mission letters, and operationalise the green oath (to do no harm) in the European Green Deal to be the guiding principle for a reformed better regulation agenda.
- Maintain the precautionary principle and defend it from being undermined.
- Reform the European Semester process around the SDGs and the European Green Deal, broadening macroeconomic assessments of Member States to reflect sustainability and integrating wellbeing, inequality and social justice.
- Ensure the participation of a wider set of stakeholders in policymaking processes, rather than allowing business voices and arguments to dominate.

- Give the Regulatory Scrutiny Board (RSB) a new mandate and membership consistent with delivering genuinely better regulation for people and the planet.
- Ensure greater access to information for the public, from real-time air quality, to chemicals in products, to governance processes and corporate access in decision-making, to permitting decisions.
- Properly resource regulators and the enforcement of the rule of law.

To help deliver this, members of the European Parliament (MEPs) should:

- Systematically engage in shaping the measures promised in the European Green Deal to ensure that they are fit-for-purpose and catalyse the promised transformative change.
- Insist on a new approach to regulation for people and the planet within major strategic initiatives. Tools available for this include calling for broad debates on the purpose of regulation and/or the specifics of the Better Regulation agenda; to producing own-initiative reports and inviting or requesting the Commission to submit a legislative proposal; and requesting regular hearings with the incoming Commission and asking oral questions to put them on the spot about their approach to regulation.
- Challenge Better Regulation whenever it manifests in practice over the coming years – for example, the promised re-evaluations for the effectiveness of laws including the Water Framework, Industrial Emissions, and REACH<sup>1</sup> directives. MEPs should refuse to accept standards that have been compromised in pursuit of a deregulatory agenda.

<sup>1</sup> Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH) is a European Union regulation dating from 18 December 2006.

# 1. INTRODUCTION

**L**aws, standards and a wide set of regulations are essential to build a new economy. They enable the basic freedoms that Europeans often take for granted, like living in a safe home, drinking clean tap water, taking a walk in the countryside, or having a good work/life balance. They are important to deliver common goals,<sup>4</sup> like prosperity, safety, equality, sustainability, peace and freedom. These are the institutional foundations of our society.

Europe faces multiple environmental, social, and economic challenges. It has just committed to becoming climate neutral by 2050 as part of a European Green Deal; while this is a major symbolic commitment and diplomatic achievement, the 2050 deadline is still too late to stay within 1.5C. It is difficult to believe that this is a time when we need governments to be regulating less, as a point of principle. But in the European Commission and many Member States including France, Germany, and the UK, that is exactly what is happening.

Over the last decade, processes of deregulation have quietly taken hold (Section 2). This is an agenda rooted in ideology and politics, pushed for by corporate lobbying as part of a desire to ensure that the costs of 'harms' from social and environmental damage are paid for by society, not companies. Not all regulatory processes are perfect; there are some that are in need of reform. But the deregulation pendulum has swung too far, putting the interests of the markets over those of people and the planet. Policymakers are now attempting to set arbitrary limits on the total amount of regulation that can be passed: new president Ursula von der Leyen's proposed 'one in, one out' rule for regulations (Section 4) has provoked widespread opposition. This marks a critical fork in the road for democratic policymaking: Europe must choose whether it wishes to escalate deregulation processes to a new level, or carve a new approach to regulation that helps ensure a fair, resilient, and sustainable economy for years to come (Chart 1).

This report looks at the European Commission's deregulation programme and the need for a new approach to regulation. First, we look at how deregulation has taken hold in Brussels (Section 2) and how it currently manifests in the Commission's processes (Section 3). We then investigate the new threat of 'one in, one out' (Section 4) which looks set to be adopted by the Commission after years of being the policy in the UK and Member States including France and Germany (Section 5). We then propose changes that need to be made to how the Commission approaches regulation both as a point of principle and in practice, and what the role of the European Parliament should be in helping to reverse deregulation.



## 2. DEREGULATION BY STEALTH: HOW WE GOT HERE

**D**eregulation is, on the surface, a set of relatively obscure but important processes to remove or water down the stock of regulations as a point of principle and make it harder to pass new ones.

But it is also important to see deregulation in its wider economic and ideological context. Underpinning deregulation is a set of deeper assumptions, rarely explicitly stated, about who policy is for and whose voice should dominate policymaking. It is a key plank of a free market project that seeks to reduce constraints on business activity and pass more of the costs of damage caused onto citizens. Deregulation morphs over time, starting with modest intentions to remove genuinely unneeded laws, but increasingly seeking to rewrite fundamental principles, such as the EU's critical precautionary principle (Section 4).

The European project was never supposed to be about deregulation. Article 2.1 of the Lisbon Treaty, the most recent amendment to the treaties that form the constitutional basis of the European Union,<sup>15</sup> establishes the principal aim of the European Union "to promote peace, its values and the wellbeing of its peoples". Should public policy be about protecting and responding to public interests, investing in public goods, and ensuring access to quality public services, or should it be about short-term private profits? Europe faces major challenges, from climate change to antimicrobial resistance, upon which policy must be focused.

### 2.1 ABOUT 'BETTER REGULATION'

The codename for the European Commission's programme of deregulation, as it has been in other countries including the UK, is 'Better Regulation'. But underneath the deliberately benign-sounding name (Section 2.2), there is very little better about it.

Better Regulation initiatives can now be found in countries including the UK (who has gone further and faster than others), France, Germany, Austria, the USA, and Australia, and the European Commission. They are far-reaching programmes that act to reduce the volume of new regulations

#### CASE STUDY: ANTIMICROBIAL RESISTANCE AND THE NEED FOR REGULATION

Antimicrobial resistance (AMR)<sup>5</sup> is a process through which micro-organisms, such as bacteria and viruses, develop resistance to the antibiotics and antivirals used to treat them – and it is on the rise. Resistant microbes are proliferating as a result, creating a serious threat to global health.<sup>6</sup>

This problem has political and economic roots.<sup>7</sup> First, the increasing privatisation of medical research has led to profit-driven research agendas, which has reduced incentives for research into one-off treatments, such as new antibiotics for drug-resistant bacteria. Second, AMR is being accelerated by the increasing use of antibiotics and antivirals in agriculture. Third, antibiotics are often misused by patients. Many are taken without prescription<sup>8</sup> and antibiotics are often prescribed for illnesses which are not bacterial.<sup>9</sup>

The EU has published an action plan to address this problem,<sup>10</sup> but in keeping with a hands-off approach to regulation,<sup>11</sup> its guidelines adopt a voluntary approach for private industry, rather than mandatory regulations.<sup>12</sup> Pharmaceutical companies have been instrumental in opaquely lobbying the EU<sup>13</sup> to stop it from implementing measures (including regulation) which might harm their profits.<sup>14</sup>

The EU's transnational reach puts it in an ideal position to take action to prevent AMR. It is essential that it takes advantage of this, rather than falling prey to the interests of private industry, which pose a serious threat to public health.

coming through and reduce the overall 'cost' of regulation as an end in itself. This multi-pronged approach reaches across government departments, earning them the nickname coined by the European Trade Union Institute: the 'hydra with many heads'.<sup>16</sup>

The stated aims of Better Regulation are "opening up policy making and law-making and listening more to the people it affects."<sup>17</sup>

In practice, however, as analysis from the New Economics Foundation (NEF)<sup>18</sup> and the European Environmental Bureau (EEB)<sup>19</sup> has shown, they are characterised by four recurring themes:

- A **negative story** about what regulation is, painting protections as burdens on businesses and administrations and suggesting that the reduction in regulation as an end in itself is of value to society.
- A **bureaucratic programme** dedicated to reviewing existing legislation, with the expressed intent of simplifying and removing regulation considered to be overly burdensome on business.
- New **cost-benefit appraisal processes** that weight the short-term 'costs to business' of complying with a particular law or regulation more substantively than the far harder to quantify benefits to society or the environment or even long-term interest of business in many cases.<sup>20,21</sup>
- A **business-first approach** to policymaking that promotes self-regulation and stakeholder engagement programmes that are heavily biased towards the private sector, thus giving corporations far more influence than civil society in the policy- and law-making process.

These are all hallmarks of the far bigger economic project – neoliberalism – of which deregulation is a central plank.<sup>22</sup>

Neoliberalism is described as "extolling the market, encouraging globalisation and generally being on the side of business".<sup>23</sup> It has its roots in the writings of Austrian economist Ludwig van Mises and his protégé Friedrich Hayek, who believed that, left to its own devices without government interference, the competitive free market would deliver on the public good thanks to the incentive to profit.<sup>24</sup> They held that regulation

was created and implemented by an unaccountable bureaucracy, which would distort business profit incentives, thus stifling progress and innovation.<sup>25</sup>

The deregulation drive is fundamentally about reducing the ability of lawmakers to make laws and is a veiled attack on the size and role of government. As this economic ideology has taken hold over Western governments, so pressure to deregulate has increased. For example, deregulation of the labour market in many of the Eurozone's struggling economies (Spain, Italy, Portugal, Ireland, and Greece) was seen as a primary tool for fighting the recession that followed the 2008 financial crisis. This included relaxing rules around the hiring and firing of employees, reductions in wages, and increasing the ability of employers to vary the number of working hours for employees. But in fact, EU countries with the lowest levels of unemployment are anything but deregulated.<sup>26</sup>

Deregulation has been a central demand of big oil and cigarette companies for much of the 20th century, aided by free-market think-tanks.<sup>27</sup> British American Tobacco, for example, directly lobbied for the introduction of Better Regulation<sup>28</sup> as a way to hold off what they saw as an increasing threat to their business (selling tobacco). Perhaps the gravest concern with the deregulation agenda is that it privileges business voices over others: not just consumers, but also over the bulk of people who have very little lobbying power, or those with no voice or rights at all, such as animal species and habitats.

Ironically, a programme that is supposed to be about simplification has made the process of regulation far more complex. Whole new bureaucracies are created inside bureaucracies in the ostensible service of reducing bureaucracy. Civil servants find themselves wrapped up in their own red tape, diverted from other tasks in service of tallying the 'costs' of regulations.<sup>29, 30</sup> Civil society organisations have had to divert significant resources away from other vital campaigning to engaging with Better Regulation behind the scenes.<sup>31</sup>

## **2.2 REFRAMING DEREGULATION**

One of the cleverest aspects of the Better Regulation agenda is that it wraps up problematic and undemocratic ideas in benign-sounding, euphemistic language. Proponents of Better

Regulation will usually stress that they are interested only in removing duplicate or pointlessly onerous regulation. Who, after all, could possibly object to that?

This is framing: choosing language and imagery carefully to trigger particular thoughts or feelings among the public. In this example, it is that there is too much regulation. The frame of Better Regulation is designed to tap into a range of culturally held stories (eg daily regulation being a barrier to personal freedom) that are at best only partially grounded in reality. But it is an effective narrative, the countering of which has to be done deliberately and carefully. As the Public Interest Research Centre argues: “President Nixon famously said, ‘I am not a crook.’ With those five words he managed to reinforce the idea, in the minds of millions of Americans, that he was in fact a crook... getting involved in denying things just gets you caught up in language that ends up associating your cause with unhelpful ideas.”<sup>32</sup>

These stories themselves have been carefully seeded over decades<sup>33,34</sup> by those who want to reduce the ability of democratically elected governments to hold companies to account and protect people and the environment. The Prime Minister of the UK, Boris Johnson, was once a Brussels journalist known for his sensationalist (and inaccurate) claims about overweening EU regulation<sup>35</sup>. In this context, it is important to see the UK’s 2016 vote to leave the EU not as a one-off, but at least in part as the culmination of 40 years of carefully drip-fed narratives and myths about the interference of Brussels – for example, think of ‘bendy bananas’.<sup>36</sup> Similarly we should not see the current crop of deregulatory processes as existing in a vacuum.

Proponents of Better Regulation, such as ex-UK Prime Minister David Cameron, point publicly to everyday frustrations for small businesses trying to comply with “needless regulation”.<sup>37</sup> But for Cameron, this disguised a broader intent to cut back the “monster” of regulation, reducing the quantity, enforcement and applicability of regulations as an end in itself.<sup>38</sup> There is a world of difference between these positions; the former is hard to argue with on face value, but there is no social mandate for lowering protections for the economy as a whole. What polls show is that people want to see tougher action on major challenges such as climate change, which may

require regulation to create rapid progress. For example, the 2019 Eurobarometer poll<sup>39</sup> showed that climate change is now the second highest concern, backing up statistically what is already clear from the marked shift in the public debate and activist momentum around the issue. The public, too, is calling for more to be done to tackle pollution: 87% of Europeans are worried about plastic’s environmental impact, and 74% are worried about its impact on their health.<sup>40</sup>

It is important to respond to the systemic threat of deregulation without appearing to tacitly endorse the frame that has been set, and instead to speak proudly of the need for guiding corporate behaviour to deliver urgent social and environmental improvements as a core function of democracy.<sup>41</sup> We need to redefine what genuinely better regulation means at a time of multiple ecological, climate, and equality crises: principled, and made in the interests of people, future generations, the natural world, and responsible business.

### **2.3 THE RISE OF ‘ONE IN, X OUT’**

Better Regulation programmes generally start the same way, with mild-sounding and innocuous intentions to, for example, “streamlin[e] the EU’s regulatory environment in order to increase its effectiveness... this creates the right incentives for business, cuts unnecessary costs and removes obstacles to adaptability and innovation”.<sup>42</sup> Appeals are made to the desire to reduce universally disliked ‘red tape’.<sup>43</sup>

But snipping away at outdated or unnecessarily complex regulation is only the start. It is, as the European Trade Union Institute (ETUI) has noted, “bureaucratic simplification with a political agenda”.<sup>44</sup> An eventual hallmark of Better Regulation programmes is applying targets or limits on the total amount and cost of regulation that can exist, such as:

- Quantitative targets for removing regulations.
- Reduction in the overall burden or cost of regulation to business by a particular amount.
- A ‘one in, X out’ rule (OIXO) whereby no new regulation can be introduced without the removal of X other regulations of equivalent cost.

The UK is the world-leader in this (Section 5.1), with a 'one in, three out' rule. It has also hardwired deregulation into law, requiring current and future governments to set a Business Impact Target<sup>45</sup> to reduce the total cost of regulation over every parliamentary term. After years of rightly rejecting this approach as being a step too far (Section 4.1), the new European Commission under Ursula von der Leyen has proposed introducing a 'one in, one out' rule for Brussels policy.<sup>46</sup>

OIXO regimes are partially about sending positive signals to business in and of themselves. A 2017 economic review from the Smith School at the University of Oxford concluded that "the requirement to remove one or two new regulations before adding a new regulation is best understood in terms of symbolic politics... one-in-X-out can serve as a potent political symbol, even if it may be devoid of precise economic content."<sup>47</sup> But such arbitrary targets for removing regulations have been heavily criticised as inappropriately blunt.<sup>48</sup> Georgetown law professor David Vladeck accused Donald Trump's 'one in, two out' target of being "unconstitutional, illegal and stupid... if you really want to reduce the regulatory load, you can't use a shotgun, you have to use a scalpel".<sup>49</sup> In the words of the previous Commission First Vice President overseeing the Better Regulation programme, Franz Timmermans, "quantitative targets for reducing regulation... are like criticising Mozart for having too many notes – which ones would you like to remove?"<sup>50</sup>

## 3. THE EUROPEAN COMMISSION'S BETTER REGULATION PROGRAMME

The European Commission first introduced its Better Regulation programme in 2005. Its mechanics are a set of new processes, largely invisible to the public. Ostensibly these focus on providing decision makers with better and more robust evidence, and opening up policymaking and evidence gathering to a wider set of stakeholders.<sup>51</sup> As with the broader framing of Better Regulation (Section 2.2), these are laudable aims at face value, but mask a deeper agenda. These processes have the deliberate effect of reducing both the stock (the total amount) and the flow of regulations (how many new proposals are tabled and passed in a year). Reductions in stock and flow are the principal metrics by which the Commission publicly reports on the success of its Better Regulation programme. In 2016, when the Commission published its review of Better Regulation to date, it claimed that as a result of its programme, between 2011 and 2015<sup>52</sup>:

- The number of proposals for new regulations declined from 159 to 48.
- Thirty-two outdated laws were repealed.
- Processes were underway to simplify regulations in 103 areas.

Better Regulation is therefore a mechanism for deregulation. Its processes, which this section explores, have the net effect of making it harder to regulate; they clog the passage of new regulation, and aim to repeal or simplify existing laws by subjecting them to so-called fitness checks. The effect of some of these processes are now described.

### 3.1 IMPACT ASSESSMENTS

Impact assessments are designed to place an economic value on the costs of particular

regulations to directly affected business and assess competitiveness concerns, while also attempting to estimate the burdens on society and the environment. It is right to properly understand what regulations will achieve, but impact assessments in practice have, unfortunately, tilted the balance in favour of the former objective – the short-term costs to directly affected business. Impact assessments are supposedly value neutral, but in practice have long been criticised for giving more prominence to the (easier-to-quantify, short-term) estimates of compliance cost than the (more diffuse and long-term) benefits to people, nature, and the environment.<sup>53</sup> As a result, there has been a bias in how the regulatory burden is calculated.<sup>54</sup> In 2006, the Organisation for Economic Co-operation and Development (OECD) warned the European Commission:

*Socio-economic impacts of environmental policies are typically subject to more detailed scrutiny than the environmental effects of sectoral policies. In some cases, even when environmental concerns have been identified, they are subsequently neglected... short-term priorities take place over longer-term perspectives, and 'hard' forms of analysis, such as cost-benefit analysis and monetisation, prevail over qualitative approaches. This is especially problematic in relation to environmental and other non-market considerations.<sup>55</sup>*

Impact assessments have also been criticised as being useful, not for helping to decide *what* to do in policy, but instead for providing evidence to justify a policy decision that has already been taken.<sup>56</sup> Former EU chief scientific advisor, Anne Glover, suggested in 2014 that those preparing impact assessments may face political pressure to include evidence to support a pre-existing conclusion. She further noted: "What happens at the moment... is that time and time again, if people don't like what's being proposed, what they say is that there is something wrong with the evidence."<sup>57</sup> In a major review of the Better Regulation programme, the ETUI concluded that impact assessments are often being employed as a way to defend reductions in or elimination of proposed legislation or their ambitions,<sup>58</sup> rather than used as a tool to make decisions about how to make them better.

This is demonstrated where impact assessments that have shown a strong case for environmental

action have nonetheless been ignored for cost reasons. One example is the assessment of the proposed Clean Air programme, which was recommended as a result of findings that in 2010 alone over 400,000 people in the EU died prematurely as a result of air pollution.<sup>59,60</sup> Following the lobbying of some of Europe's employers for this programme to be scrapped on the basis of it being too expensive, the impact assessment was ignored and the Clean Air programme was withdrawn.

The disproportionate focus on short-term compliance costs is a further problem. As the Brussels-based NGO Finance Watch notes: "Compliance costs are not the same as the (negative) impact of regulation on a certain business model. Often, this impact is often the purpose of the regulation."<sup>61</sup> That is to say, the point of regulation is to curtail particular types of damaging activity for the economy as a whole and to promote fair and sustainable business; what it might cost (some) business to comply with this new regulation should not be given undue prominence. Costs that are not met by those who would otherwise profit from unsustainable activity will instead be borne by society, the economy as a whole, or the environment. As Finance Watch goes on to note, "Is it OK that large banks will lose hundreds of millions in potential profits, in exchange for taxpayers not paying billions to save banks?"

Business has a clear incentive to provide inflated cost estimates in order to ward off unwanted regulation. Indeed, this dynamic has long been a feature of the impact assessment process. In 2009, the Aldersgate Group of businesses noted:

*Cost assessments [for new environmental regulations] ... are routinely based on exaggerated figures from industry - in the past, trade organisations have systematically inflated cost estimates to combat new regulations.*

They cite the example of the European Commission's impact assessment for EU car efficiency targets, in which the initial estimate of supplementary costs per vehicle (€577) was inflated by over six times following heavy lobbying by the car industry, a change which they say profoundly influenced the European Commission's decision to water down its original proposals.<sup>62</sup>

### **3.2 DOMINANCE OF BUSINESS VOICE**

This points not just to the tendency towards 'policy-based evidence' highlighted by Anne Glover, but also the dominance of the business stakeholder voice. One of the steps of the Better Regulation process includes consultation of social partners and stakeholders. 'Social partners' is a term the EU uses<sup>63</sup> to refer to representatives of management and labour – in other words, employer organisations and trade unions. 'Stakeholders' is a group comprising powerful and influential organisations and experts.

While social partners are only consulted on matters relating to social policy, stakeholders receive full-scale consultation. Over the past few years, at the insistence of several powerful organisations, the Commission has increased the number and length of its consultations with stakeholders, and carries these out at an earlier stage up to the draft impact assessment. The ETUI points out that this creates a significant bias towards business interests.<sup>64</sup> The opinions of social partners such as workers have been disregarded, such as in the case of a proposal from hairdressers on increasing health and safety in their workplace, where the initiative was dismissed on cost grounds. This request from hairdressers was described as an "unnecessary bureaucratic burden".<sup>65</sup>

Deregulation is at its root a programme *for* businesses, responding to years of lobbying from some of the least socially useful businesses, via the information they provide. It is far more likely that business will engage with proposals to prevent them from succeeding as regulations threaten to curtail their activity - this motivates businesses to engage with the Commission's consultations. Business has huge resources to support its lobbying, particularly against activity it does not like; 2014 figures suggested the financial sector spends €120 million every year in lobbying, vs €4 million spent by consumer groups, NGOs, and trade unions combined.<sup>66</sup> As the Commission itself notes, some groups will be in a better position to take part in such "resource-intensive" activity.<sup>67</sup>

### **3.3 THE REFIT PROGRAMME**

A core part of the Better Regulation programme is the regulatory fitness and performance regime, known as REFIT. It aims to make "EU law simpler and less costly"<sup>68</sup> and carries out regulatory fitness and performance checks on existing legislation, exploring whether laws are held to be fit-for-

purpose or need reform or even withdrawal. The legislation's effectiveness, efficiency, relevance, coherence, and EU added value are assessed.

Many of the same challenges explored earlier apply to REFITs, which have been seen as a tool to question and weaken existing legislation.<sup>69</sup> As with impact assessments, there is an evidence and analysis bias in that it is easier to assess short-term economic costs to affected industry (which affect the 'efficiency' assessment) than widespread social and environmental impacts or long-term economic benefits for new industries (together affecting the 'effectiveness' assessment).

There is also a REFIT platform<sup>70</sup> that brings together the Commission, Member States, and other stakeholders to "improve" EU legislation, with a specific aim to "lighten the load" by exploring suggestions on how to improve laws and reduce the regulatory burden. The aim of reducing the regulatory burden is at the core of this tool and process.

### **3.4 THE REGULATORY SCRUTINY BOARD**

The Regulatory Scrutiny Board (RSB) provides arms-length scrutiny of draft impact assessments, REFITs, and major evaluations of legislation, and comments on whether they are sufficiently robust to be accepted, often requiring reworking and resubmission. Sometimes, impact assessments associated with proposals for new legislation are rejected to be done again – 28% were rejected in 2018<sup>71</sup> as being of insufficient quality. If the second impact assessment is also held to be insufficiently robust the Commission can halt the proposed legislation entirely.<sup>72</sup>

The RSB is made up of seven full-time members, four of whom have been drawn from the Commission itself. It is positive to have a dedicated scrutiny body, but its current mandate of ensuring regulations are not burdensome (as opposed to ensuring they deliver on social and environmental imperatives) reduces the probability that a new legislative proposal will be put forward. This chilling effect is one of the deeper and problematic areas of the wider deregulation agenda; the nearly invisible cultural change that makes it harder to get new laws off the starting blocks. It will be vital for the tools and mindset of the RSB, and indeed the REFIT programme, to be reformed in light of 2019 commitment to a European Green Deal.

### **3.5 EFFECTS SO FAR**

Several cases where the Better Regulation agenda has been carried out so far have put the health and wellbeing of Europeans and the environment at risk.

2014 saw a major outcry from around Europe when the European Commission decided that the Birds and Habitats Directives, vital safeguards for nature, were to be opened up and thus threatened as part of the REFIT process. More than half a million citizens responded to a Commission consultation on the review. After some lengthy delay, the REFIT conclusions were published and concluded that the Directives were fit for purpose, with some more effective implementation needed. However, the key issue here is that a process which is usually behind-the-scenes was brought suddenly into the public eye, with an overwhelming response from the public against reviewing the Directives *as a point of principle*.<sup>73</sup>

Progressive businesses, NGOs, and Members of the European Parliament (MEPs) were similarly concerned by the sudden withdrawal in 2015 by the Juncker administration of proposals for a new Circular Economy Package, which would have reduced waste and resource inefficiency across the EU. *Parliament Magazine* notes that this occurred because "it did not match team Juncker's 'Better Regulation' agenda."<sup>74</sup> The Circular Economy Package that resulted, following widespread anger, was slammed by the Alliance of Liberals and Democrats for Europe (ALDE Group) shadow rapporteur on the circular economy, Gerben-Jan Gerbrandy, as being too weak and having "wasted months of work and many hours of parliamentary time".<sup>75</sup>

Corporate Europe Observatory (CEO) has explored at length the controversies surrounding updates to the Carcinogens and Mutagens Directive 2004. The revision was called for by trade unions and some Member States to include additional controls, and a levelling of the playing field across the EU, on substances linked to the 100,000 people that die every year in the EU due to work-related cancers. CEO shows that the tools and processes of the Better Regulation programme were harnessed by industry to slow down the process of regulation, to push self-regulation ahead of higher standards, and to reduce the scope of the final revised Directive.<sup>76</sup>

The most important thing to note about the Better Regulation agenda is that it is specifically

### CASE STUDY: THE FINANCIAL CRASH

The 2008 financial crash epitomises the effects of stripping back rules and regulations in the mistaken belief that the market is self-regulating.

Regulations for the financial industry were developed in the aftermath of the Second World War by policymakers acutely aware of the system's tendency to swing from boom to bust. Effective regulation was used to ensure banking activities supported broader social, national, and industrial objectives,<sup>78</sup> and protect society from unrestrained speculation and risk-taking in the real estate sector. This was pivotal to the post-war economic boom, and during this period Europe did not experience a single banking crisis.<sup>79</sup> Nevertheless, during the 1980s, regulations were stripped back,<sup>80</sup> and democratic oversight removed – driven by the argument that regulation created barriers to profit which would allow banks to innovate and allocate resources more efficiently. These were replaced by banks internally modelling risk, and a self-regulating system that was anything but. Policy over financial regulation was shaped by 'expert groups'<sup>81</sup> dominated by representatives of financial corporations.<sup>82</sup> This was reinforced by huge lobbying efforts from the financial sector.<sup>83</sup>

Since this period of deregulation, we have seen 147 banking crises across the globe, with roughly a third of these taking place in Europe.<sup>84</sup> Not only this, there has also been a rise in non-productive and speculative lending, as well as environmentally damaging activities.<sup>85</sup>

designed to make it harder to pass new regulation through a broad set of new mechanisms and bureaucratic processes. Concrete examples sometimes emerge of when these processes have specifically led to direct deregulation. But mostly the effect is what is called 'regulatory chill', under which policymakers are discouraged in direct and indirect ways from bringing forward or pursuing proposals for new legislation in the first place.<sup>77</sup> A culture is created, accompanied by new bureaucratic hurdles to be jumped, under which self-regulation by companies becomes more attractive than new regulation, and nascent ideas for new regulation may never be taken forward in the first place. These hurdles are defended in the name of ensuring that better evidence is taken into account as to the effects of and need for policies – a laudable aim which we support. The problem comes however when the explicit *purpose* of this new set of mechanisms is to reduce the flow and stock of regulations *as an end in itself*. The imposition of quantitative and arbitrary targets for the reduction of regulation ensures that the net effect of Better Regulation is not to do regulation better, but simply to do less of it.

Similar patterns are now recurring in the Better Regulation agenda. The financial crisis of 2008 and the events leading up to this should provide a lesson that overzealous deregulation can have major, unjust impacts on people, the planet, and the economy.

## 4. DEREGULATION AND THE FUTURE OF THE EU

This section explores the new proposed ‘one in, one out’ deregulation regime for Europe, and explores other ways in which the wider pressure to deregulate starts to undermine the essence of the European project itself.

### 4.1 ‘ONE IN, ONE OUT’

For all the new barriers posed by the Better Regulation programme, the Commission stopped short of proposing the kind of targets for cutting regulation that have been adopted by some Member States (Section 2.3). This provided some limited justification to the long-standing claims of Frans Timmermans, the Commission Vice President in charge of Better Regulation, that the regime was “not about deregulation”.<sup>86</sup> The Commission’s official position was that the political setting of targets to cut regulation as an end in itself:

*[...]with no clear justification for how they would be calculated [...] would create deregulatory pressures and impair its political responsibility to deliver what needs to be done when it needs to be done (consider for instance the past need to respond to the financial crisis) [...] the same considerations apply to the system of ‘one in one out’ [...] regulatory costs should be reduced on the basis of evidence, not simple numerical targets.<sup>87</sup>*

However, this has changed. The new Commission President, Ursula von der Leyen, has written mission letters<sup>ii</sup> to the commissioners-designate proposing a ‘one in, one out’ rule, under 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.”<sup>88</sup> Particularly constraining are the words “in the same policy area”. It is understood that the principle was added for the benefit of the European People’s Party (EPP) grouping in the

European Parliament, although it is worth noting that the Alliance of Liberals and Democrats for Europe (ALDE) Group has also been a strong advocate for deregulation targets.<sup>89</sup>

This new proposal escalates the Commission’s commitment to removing the so-called burden of regulation.<sup>90</sup> It is evidence of what was argued in earlier sections of this report and has been maintained by campaigners for years: Better Regulation programmes are a slippery slope that begin with gentle promises to trim only the most unnecessary regulation, and proceed to reduce the stock of regulation as an end in itself. ‘One in, one out’ can quickly become ‘two out’, or in the case of the UK (Section 5), ‘three out’. Unsurprisingly, it has provoked strong opposition from NGOs<sup>91</sup> and trade unions.<sup>92</sup>

In a range of commissioner hearings in the European Parliament, the commissioner-designates underlined that the ‘one in, one out’ rule would not be applied mechanically,<sup>93</sup> and assurances were given that the rule would not compromise commitments to health and the environment. However, despite this, the proposal for a ‘one in, one out’ principle has still not been withdrawn or altered, though it does not explicitly appear in the European Green Deal.<sup>94</sup>

Without the ‘one in, one out’ rule being withdrawn from the mission letters, the risk remains of regulatory chilling and short-term economic costs retaining primacy over a transformative agenda that puts people, their wellbeing, and the planet at its core. For as long as the fundamental narrative remains unchecked – that regulation is guilty of being an intolerable burden on business until proven innocent – then the threat of ever greater deregulation will remain.

### 4.2 DEREGULATION VS THE EUROPEAN GREEN DEAL

The incoming Commission President, Ursula von der Leyen, has also proposed a Green Deal for Europe under which the EU would become climate neutral by 2050.<sup>95</sup> It also commits to “a zero-pollution ambition for a toxic-free environment”. Within the formal European Green Deal Communication, while there is no mention of ‘one in, one out’, there is a commitment to ‘simplify’

<sup>ii</sup> Mission letters are sent to new commissioners-designate by the incoming Commission President to set out the scope of what they are expected to achieve in their role.

legislation where needed, and an invitation to submit recommendations online.<sup>96</sup>

The dissonance between these headline objectives is clear. There are commitments to both “improve the way [...] better regulation guidelines and supporting tools address sustainability and innovation issues [...] the objective is to ensure that all Green Deal initiatives achieve their objectives in the most effective and least burdensome way”<sup>97</sup> – but also that this and all other EU initiatives live up to the green oath to “do no harm” made in the European Green Deal.

It is difficult to reconcile these competing priorities given the processes and structures that Better Regulation has established, and hard to imagine that the European Green Deal and other commitments to meet the sustainable development goals (SDGs) can be achieved without recourse to new regulation and a tightening of existing laws. Short-term measures promised for 2020 and 2021<sup>98</sup> will be an important test of whether the Green Deal ambitions win out over the deregulatory instinct within the principle of ‘one in, one out’.

The European Green Deal will also be the test of whether regulations will be properly enforced. After all, a regulation is only useful if it is adhered to. In the European Green Deal Communication, the Commission commits to “work with the Member States to step up the EU’s efforts to ensure that current legislation and policies relevant to the Green Deal are enforced and effectively implemented”,<sup>99</sup> though it remains to be seen how this will really result in an escalation of implementation and enforcement efforts in practice. After many years of relative inactivity, at the end of its last mandate, the Commission finally launched multiple infringement proceedings against Member States for not enforcing regulations.<sup>iii,100</sup> In part, this is due to the limited resources within the Environment Directorate-General to work on enforcement and the insufficient internal capacity to take initiative on all the needs in environmental policy, although it should be noted that allocating resources internally is a matter of choice. The new Commission will need to assess its own structure, allocation of resources, and governance processes and choose

how it will be able to deliver on an ambitious European Green Deal for people and the planet.

The European Green Deal Communication also underlines the importance of innovation. In wider policy there is a risk<sup>101</sup> that an ‘innovation principle’ comes to undermine the precautionary principle — the latter of which underpins the European project and major pieces of legislation such as the chemicals safety directive, REACH.<sup>iv</sup> While the precautionary principle states that activities like the introduction of new technologies or products should not be undertaken unless their safety is beyond reasonable scientific doubt, the ‘innovation principle’ would give equal weight to the ostensible impact of regulations upon ‘innovation’.<sup>102</sup> This gives industry even more strength to argue against the introduction of new regulations or the maintenance of existing ones, as can already be seen through leaked evidence of corporate lobbying to undermine REACH and other laws that are fundamentally about public and environmental protection.<sup>103</sup> While innovation is essential for us to tackle economic, social and environmental challenges, the actual ‘innovation principle’ pushed for by lobbyists prioritises industry interests over the EU’s existing social and environmental standards – in much the same way as the Better Regulation programme purports to be benign but is about tilting the playing field in favour of those who would be impacted by principled regulation. The ‘innovation principle’ is the next frontier of the creeping threat of deregulation, marking the move of the deregulation project into rewriting the underlying principles of the European project itself. While it is positive that the ‘innovation principle’ is not explicitly mentioned in the European Green Deal, its implicit presence creates an ongoing risk.

#### **4.3 DEREGULATION AND TRADE**

In many ways Better Regulation is about the codification into everyday Commission processes of the deregulatory approaches that have been highly controversial within international trade deals for many years. Trade treaties can pose a threat to hard-won regulation that protects people and the environment. For example, the principle that countries in a trade agreement recognise the standards of each country’s traded products and

<sup>iii</sup> The July 2019 infringement package had in total more environmental cases initiated by the Commission than under its entire mandate.

<sup>iv</sup> Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH) is a European Union regulation dating from 18 December 2006.

services as broadly equivalent could drag down standards in the country that has more stringent regulations. There has been significant public outcry about the prospect of chlorinated chicken<sup>104</sup> or genetically modified organism (GMO)<sup>105</sup> foods from the USA being part of any future trade deals, due to the associated obligation for the EU to accept on the market products that are held to different health and safety checks.

Fundamentally, trade deals in the modern age are not principally about tariffs, but about “harmonising” – usually code for ‘reducing’ – regulatory standards.<sup>106</sup> Their impact should best be thought of as anti-regulation in that many provisions do not impose specific requirements but state that a whole sector or activity must not be regulated. Trade deals such as the Comprehensive Economic and Trade Agreement (CETA) between Canada and the EU establish regulatory cooperation councils that are primarily made up of people who lack expertise beyond the world of trade and who might prioritise removing barriers to trade above concerns about the public or environmental interest. This approach – where

trade deals assess the suitability of regulations on the extent to which they achieve trade promotion – is a microcosm of the bigger deregulation drive.

The new generation partnership agreements that the EU enters into with third countries, such as those concluded with Singapore, Japan, and Canada, have a chapter on sustainable development, but such chapters in trade agreements are near to impossible to enforce, with no known attempt by the Commission to ever rely on this chapter against investors or third party states. Indeed, while trade disputes are resolved in investor-state dispute settlement (ISDS) arbitration – under which investors can sue states in private tribunals if they feel that they have been discriminated against by regulatory or other policy<sup>107</sup> – investment and commercial interests will continue to overshadow any concern of environmental and sustainable development interests. The use of ISDS in trade disputes has a direct chilling effect on regulation, as states are afraid that large international corporations will sue them for changing the conditions for their investments.<sup>108</sup>

#### **CASE STUDY: FRANCE THREATENED WITH ISDS FOR THE CLIMATE ‘HULOT’ LAW**

In 2017, the then French Minister for the Environment, Nicolas Hulot, proposed a new far-reaching climate law that would have progressively ended fossil fuel extraction and banned the renewal of extraction permits. The proposed law would have aligned France with the Paris Agreement.

Just as Hulot’s law was passing its final stages before being adopted, the French government was subjected to heavy lobbying by the fossil fuel industry, especially by Vermillion that extracts nearly 75% of French oil. The companies threatened the French government under ISDS if the law was passed as it would have risked their investments and breached the Energy Charter Treaty.<sup>109</sup>

In the end, the government was under so much pressure that what was a rigorous climate law was diluted to the point that it undermined its original ambition. One year later, Nicolas Hulot resigned as minister, explaining that fossil fuel companies had too much influence on environmental policy, making his job to protect the environment in that position impossible.

## 5. BETTER REGULATION IN THE UK, FRANCE AND GERMANY

France, Germany, and in particular the UK have developed their own programmes of Better Regulation. They have adopted their own 'one in, X out' target – each with a different number for X, which illustrates the arbitrary and politically driven nature of the approach.

### 5.1 UNITED KINGDOM

The UK, which has been at the vanguard of Better Regulation for many years, has hardened its language and approach.<sup>110</sup> It has progressively introduced ever more deregulatory mechanisms, and ever tighter targets to reduce the overall amount of regulation as an end in itself. Unlike some other countries, the UK has been open about its intent to deregulate, the 2015 Deregulation Act being an example.<sup>111</sup> The impact assessment for another piece of deregulatory legislation from that year, the 2016 Enterprise Act, states: "the focus of regulatory reform in the UK has been on reducing the burden of regulation and minimising the costs it can impose... to promote economic growth."<sup>112</sup>

The UK has

- a 'one in, three out' rule for government regulation,<sup>113</sup> under which no new rule can be introduced without every £1 of additional burden on business being accompanied by reductions of £3 elsewhere.
- a law introduced in 2013<sup>114</sup> which requires the government to set a so-called Business Impact Target for the amount it will reduce the total regulatory burden by over every term of parliament. This was most recently set at a £9 billion reduction over the period 2017-2022, which was the expected duration of the previous parliament before the December 2019 UK general election.

The UK National Audit Office, which scrutinises government spending, found that under the various Better Regulation agendas, "the government does not ensure the wider societal costs and benefits of regulation are adequately considered... Seven of the 14 departments involved told us there were conflicts between deregulation and their overall policy objectives."<sup>115</sup>

Following the tragedy of the Grenfell Tower fire in 2017, the government's deregulatory policies came under intense public scrutiny<sup>116,117</sup> and it appeared to be placing far less of a public priority on the issue.<sup>118</sup> However, the government also recently announced a Brexit red tape challenge – a Brexitised version of its previous Better Regulation programme – which asks business to suggest which EU rules the UK should not keep after its departure from the European Union.<sup>119</sup>

The call for the EU to deregulate was a central plank in the UK's demands ahead of the UK referendum on EU membership. The settlement agreement that was reached in February 2016 contained significant deregulatory elements in service of "competitiveness".<sup>120</sup> That agreement became null and void following the result of the referendum. However, the UK may exert deregulatory pressures on the EU as it negotiates its future trading relationship.<sup>121</sup> The unified insistence by the EU27 that the level of access to the EU market must be linked with the level of harmonisation in environmental, consumer, health, worker protection, and other standards is likely to be tested in the months and years ahead.

### 5.2 FRANCE

France's Better Regulation regime has gathered force under the Macron Presidency, building on existing provisions that have been introduced over the course of the 21st century. Macron has made the loosening of regulations in areas such as labour laws a central plank of his presidency.<sup>122</sup> A number of characteristic processes have been introduced that explicitly or implicitly make it more difficult for legislators to pass laws. France's 'one in, two out' law was introduced in 2017<sup>123</sup> and has led to a sharp fall in the number of new regulations being proposed – from 150 to 30 per year.<sup>124</sup> One of the first acts of the Macron government, in July 2017, was to issue a circular effectively banning the so-called gold plating of EU regulation, ie, going further than minimum standards.<sup>125,126</sup>

### **5.3 GERMANY**

A 'one in, one out' rule has operated in Germany since 2016 as the latest development in a so-called bureaucracy reduction programme in force since 2005. Its aims are similar to those discussed earlier in this section. It is supported by a National Regulatory Control Council (NKR), a body which assesses the costs of regulation. It is made up of public, private, and academic figures but has no representatives from civil society groups such as environmental NGOs.<sup>127</sup>

## 6. RECOMMENDATIONS

### 6.1 RECOMMENDATIONS FOR THE EUROPEAN COMMISSION

#### Repurpose regulation to deliver on the promises of the European Green Deal and the sustainable development goals

A 'think sustainability first' principle should guide the Commission's law-making procedures, which will help achieve the objectives of the European Green Deal and wider challenges. The Commission should:

- Translate the sustainable development goals (SDGs and European Green Deal commitments) into concrete headline objectives for policy and into metrics for success for regulatory policy, in place of its current focus on reducing burdens. Regulations should be assessed on a case-by-case basis against this principle.
- Proactively identify where new legislation or legislative tightening is required to drive the promised transformative change in the European Green Deal, to meet the needs of people and the planet, and to live up to the green oath to do no harm.
- Overhaul its assessment toolkit to identify the cost of inaction and the need for action; to fill legislative gaps and/or tighten existing legislation before it is too late to deliver on the SDGs; and to address the climate emergency, the biodiversity crisis, and risks to our health and the planet from chemicals and pollutants.

#### Reform regulatory assessment processes around delivering on the SDGs, not evidencing burden

It is right to understand the likely impact and effectiveness of policy, but it is important to have the right metrics for what success looks like. At present, impact assessments and the regulatory fitness and performance (REFIT) programme are too driven towards appearing to provide evidence of regulatory cost as opposed to a fuller and more balanced integration of environmental and social benefit. The Commission should:

- Integrate environmental issues properly and fully.
- Integrate wellbeing, inequality, and social justice concerns more adequately.
- Carry out more studies on the cost of policy inaction using the aspirations of the European Green Deal and the SDGs as metrics for success, to help identify areas where more action is needed.
- Assess the existing stock of directives, regulations, standards, and programmes to check whether they are fit-for-purpose for the European Green Deal and SDG objectives and whether reform is needed to ensure coherence.

#### Scrap 'one in, one out'

The proposed 'one in, one out' mechanism for new initiatives risks exacerbating a chilling effect on regulation for central issues such as climate, environment, and health. It is wrong in principle and in practice and should be scrapped.

#### Maintain the precautionary principle and defend it from being undermined

While innovation will undoubtedly be helpful, it should not be used as an excuse to not assess or manage risks facing people's health from chemicals, or communities from climate change or pollution, or ecosystems from the multiple pressures. The precautionary principle needs to continue to guide new regulation when the risks of innovative technologies are unknown. Attempts to slowly introduce a competing 'innovation principle' should be strongly resisted.

#### Reform the European Semester around the SDGs and the European Green Deal

The SDGs and the European Green Deal commitments should be formally integrated into the European Semester process, which currently assesses the macroeconomic situation of each Member State. It has been used to address and monitor the financial situation and the implementation of measures as a response to the last financial crisis. The new Commission President, Ursula von der Leyen, has committed to "refocus[ing] our European Semester to make sure we stay on track with our Sustainable Development Goals".<sup>128</sup> This is encouraging, but must include:

- Formal integration of a wider set of environmental and social indicators that reflect the European Green Deal and the SDGs, including integrating wellbeing, inequality, and social justice to support the ambition for a just transition.
- Transparent and participatory monitoring and reporting of progress towards SDGs, with consultations with civil society on indicators, locking in voices other than those of industry-led stakeholder groups.

### **Ensure balanced participation of a wider set of stakeholders**

All stakeholders should have equal opportunities to make proposals to policymakers. The Commission must ensure this balance in its interactions with stakeholders both quantitatively and qualitatively. This involves soliciting contributions from under-represented groups, in particular those that stand to benefit from the public purpose of the regulation, and not privileging consultation towards industry or business voices ahead of those of wider civil society.

### **Give the Regulatory Scrutiny Board a new mandate and membership**

The principle of independent scrutiny of regulatory processes is good, but not as it is currently mandated and formulated. The current Regulatory Scrutiny Board (RSB) is too narrowly drawn and cost-focused to play the role that sustainable development requires. The RSB should be:

- Required to advise on whether the stock of regulation delivers on the European Green Deal promises, environmental and social commitments and the SDGs, rather than simply burden-checking regulations.
- Drawn from a far wider pool of stakeholders with expertise in environmental, social, and sustainable economic issues and challenges.
- Asked to look more closely at whether environmental and social issues are fully taken on board in the impact assessments, REFITs, and major reviews.
- Upgrading the assessment of risks for the range of pressures facing people and the planet, considering the cocktail effect of chemicals,

feedback loops, multiple inter-connections in ecosystems and climate systems, and non-linearities, such as tipping points.

### **Properly resource regulators and the enforcement of the rule of law**

A lack of resources threatens the enforcement of existing regulation. The Commission needs to signal to Member States that priority should be given to capacity-building for agencies, authorities, and regulators in environmental and health protection, including inspectors and a judiciary with an improved capacity to be able to handle environmental cases at a local to national level. The Commission can take the lead on this by setting requirements to the Member States on inspections, judicial cooperation, and access to justice. Resources are also needed to increase the capacity of the EU Commission to initiate systematic infringement proceedings against Member States who fail to follow the EU environmental and health and safety rules.

## **6.2 RECOMMENDATIONS FOR MEMBERS OF THE EUROPEAN PARLIAMENT**

### **Insist on a new approach for regulation for people and the planet within major strategic initiatives**

The central task is to re-establish the *point* of policymaking as being delivery on the multiple challenges Europe faces and on which Europeans demand action. The European Parliament must hold the Commission President and her College of commissioners to the promises made to bring in a European Green Deal that is transformative, rises to the environmental crisis, responds to the youth marches and Green Wave in the elections, and promotes regulation that protects people and the planet on sustainability first principles.

Members of the European Parliament (MEPs) have a number of tools at their disposal. They can:

- **Call for a debate on a new approach to regulation in the light of the European Green Deal and SDGs.** This could include discussion of the outcomes of the REFIT process so far, including the risks to social and environmental protections, the relative input received from different stakeholders, and the methodology used to weigh costs

against benefits. The debate, however, should aim to set the agenda, calling for Europe to be the frontrunners in developing and enforcing protective regulations. MEPs can also raise this issue as a priority in parliament in the hearings with incoming commissioners, as they start to define themselves and their agendas.

- **Produce own-initiative reports to call on the Commission or the Council to take action, either on a particular issue, or on their approach to regulation more broadly.**<sup>129</sup> MEPs can also launch initiatives focused on areas in which protections are being compromised by Better Regulation, such as in the case studies throughout this report, following their 2019 initiative calling for action on the non-toxic environment.<sup>130</sup> If and when key environmental and social concerns are not defended or promoted adequately by the European Commission, the European Parliament should use its new powers of the Right to Initiative to drive progress.
- **Request hearings with the Commission to address non-compliance with existing regulation and ensure they are emphasising the repercussions of breaking them to Member States.** While these issues must be raised by the Commission, the European Parliament can host debates and launch initiatives to drive this forward. It can also use oral questions to express concern to the Commission about its Better Regulation approach.

### **Challenge Better Regulation whenever it manifests in practice over the coming years**

MEPs should refuse to accept standards that have been compromised in pursuit of a deregulatory agenda.

A number of pieces of EU legislation will face REFITs during the coming parliamentary period, including the Water Framework Directive (WFD), the Industrial Emissions Directive (IED), the Urban Waste Water Treatment Directive (UWWTD) recast, as well as the expected REACH review (2023). These will require European Parliament vigilance and each of them is an opportunity to call for REFITting them 'upwards' – in accordance with the SDGs and the new aspirations of the European Green Deal. It is also possible that there will be a

proposal for a new Ambient Air Quality Directive (AAQD) or new roadmap for AAQD to consider World Health Organization (WHO) standards, a revision to the Environmental Noise Directive (END), and a Zero Pollution Strategy. The European Parliament can help ensure that if new legislative proposals ensue, the ambitions are in line with a sustainability-first approach.

### **Systematically push for greater transparency and access to information**

The European Parliament should promote the availability of information<sup>131</sup> for the public. There needs to be increased transparency on governance processes, such as who decides on setting standards and transparency on corporate lobbying. There is also a need for more information on products to ensure consumer confidence in their safety, for instance on the amount of chemicals they are exposed to. Access to real-time accurate data on air quality and water quality should inform Europeans of their life choices and empower them, permitting decisions that affect people, neighbourhoods, and lives, and on the wider state of the environment to support policymaking, implementation, and enforcement. The improved access to information will help reduce the risk of deregulation by stealth and help identify needs for action that will support the European Green Deal, the SDGs, and European wellbeing.

### **Systematically engage in the measures promised in the European Green Deal to ensure that they are fit-for-purpose and catalyse the promised transformative change.**

The environmental strategy – the Seventh Environmental Action Programme, 7EAP – will come to an end in 2020 and a new eighth EAP will be tabled for negotiation next year. Parliament should push for this strategy to renew current priority objectives as well as increase ambition to address issues including the climate emergency, biodiversity crises, and risks to health from chemicals and pollution. 8EAP should prioritise a new mission for policy around delivering on existing commitments, in particular the European Green Deal and the SDGs.

It should also withdraw the 'one in, one out' principle from the commissioner's mission letters, and operationalise the green oath (do no harm) noted in the European Green Deal, and have it

become the guiding principle for a reformed Better Regulation agenda.

It should also insist on stronger implementation and enforcement. Poor implementation should not be used as an argument to say that standards are too ambitious and hence reduce regulatory responsibilities.

Parliament should demand oversight over the ongoing 'REFITing' of existing legislation under the guise of Better Regulation, and for transparency over what legislation gets dropped or rejected at an early stage. It should also push for REFITs to assess whether existing legislation, standards, and programmes are fit-for-purpose as regards the European Green Deal and the SDGs and to address the multiple environmental crises facing people and the planet, ie, a 'good regulation for people and planet check'.

## 7. CONCLUSION

The European project stands at a crossroads, confronting the triple challenges of nationalist populism, environmental crises, and the potential economic and wider challenges associated with Brexit. It is in its long-term interests to demonstrate that it is a force for good, unafraid to put the protection of people and the planet above that of the interests of a narrow band of corporations whose business model depends on loose regulation.

Better Regulation is yesterday's idea unfit for the challenges Europe faces and the commitments made in the European Green Deal. Better Regulation's escalation to include a 'one in, one out' rule – as if regulations were calories, where we could conceive of a maximum amount it is wise to have, in a world of increasing complexity and urgent environmental and social challenges – is a dangerous new development. It must represent a line in the sand.

Now, as never before, a new approach is needed to regulation that stops equating vital protections with red tape, or the ambition to protect citizens with gold plating, in the name of freeing up potentially damaging business activity. The political climate is being shaped by huge challenges of economic and environmental breakdown. Simplifying the law is one thing; putting corporate interests above the protection of people and the planet is another thing altogether.

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