



**Mr Maroš Šefčovič**

Vice President Interinstitutional Relations and  
Foresight  
European Commission

**Cc:**

**Ms Ilze Juhansone**

Secretary General  
European Commission

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Dear Vice President,  
dear Maroš!

## **RE: Annual Burden Survey 2021 and stakeholder participation in better regulation**

I am writing to you to share BusinessEurope's assessment of the latest developments with regard to stakeholder involvement in better regulation as well as the recently published Annual Burden Survey 2021. BusinessEurope strongly supports your efforts in driving the better regulation agenda forward and improving the tools available to achieve top quality regulatory framework in the EU. The Better Regulation Guidelines and the updated Toolbox of 2021 are a good step forward.

However, we are increasingly concerned that those available tools are either used very unevenly across the Commission services or become just a formality and victim of the "tick-the-box practices", which jeopardises the underlying principles of better law-making. The negative trends are becoming systemic, which affects the quality of legislation, its enforceability and overall business environment in the EU. BusinessEurope is sharing its concerns on some of the specific measures where we observe these negative trends. It is closely linked to the Annual Burden Survey 2021.

### **Consultations with stakeholders**

BusinessEurope has observed a number of significant deviations from the standards set for consultations with stakeholders under the Better Regulation Guidelines, most notably in terms of durations (the standard 12-week period often shortened), picked timing (often over the holiday period) and consultation questionnaires which somewhat predetermine the answers (lead questions restricting alternatives of the answer). It is becoming a



pattern that there is no due consideration given as to how to organise consultations in order to ensure meaningful participation of stakeholders, while the views of business as key societal stakeholder are predominantly ignored. Ultimately, the uptake of the stakeholder consultation results is increasingly imbalanced. These negative trends especially affect SMEs. Regrettably, the vast majority of BusinessEurope's [recommendations on public consultations](#) of 2018 remain valid.

Among the recent examples on different types of consultations the Commission held:

- A call for evidence and a public consultation on the **Cyber Resilience Act**. The public consultation was open for 10 weeks only (16 March – 25 May 2022), moreover it coincided with the Easter break. It is a proposal with far-reaching competitiveness and Single Market trade implications.
- A targeted consultation on a “technical” legal **amendment to Regulation 1025/2012 as part of the Standardisation Strategy package** was launched on 21 December 2021 to 14 January 2022. Indeed, there are no specific guidelines on the duration of *targeted* consultations with stakeholders but 3.5-week duration with the Christmas holidays within, puts into question whether there was any intention to meaningfully consult. Moreover, the amendment that was labelled as ‘technical’ is actually a politically significant change in governance of the European standardisation, increasingly bearing geo-political significance.
- A call for evidence with a public consultation on the **Single Market Emergency Instrument**, a significant legislative initiative with huge implications on the balance between the private-public sector, was announced for only 4 weeks (13 April to 11 May 2022) instead of 12 weeks, the minimum set under the Guidelines. As result, the Regulatory Scrutiny Board had a negative opinion issued, later followed by a positive one with comments on subsidiarity and proportionality. Rather united stakeholder inputs on the proposal’s scope, rightly summarized in the proposal’s Explanatory Memorandum, were disregarded in the proposal itself. It went substantively further than the stakeholders called for.

## Fit4Future Platform

The Annual Burden Survey 2021 states that the simplification work in the three priority areas (digitalisation / simplification / labelling, authorisation and permitting procedures) has been fully completed by the Platform and, in the majority of instances, already reflected in the Commission’s initiatives. BusinessEurope would like to share a few examples where the conclusion in the Survey may not be as obvious, notably on the simplification proposals where our delegate to the Platform was the rapporteur.

- The published **revised Industrial Emissions Directive (IED)** proposal did not reflect a vast majority of the Fit4Future Platform suggestions adopted on 17 November 2021, leading to a more complex and burdensome initiative instead.
- The Platform is still working on its opinion on the **VAT Fit for Digital Age**, according to the timetable set by the Commission, however the Commission decided to publish a



proposal in this regard (publication planned on 7 December) with hardly any consideration of the Fit4Future Platform opinion possible, as the opinion will be adopted on 5 December.

All the effort of the Platform members, from stakeholders to governments, in reaching consensus requires a lot of commitment and trust in the outcomes. If there is a shadow of doubt on the relevance of all that effort, it may undermine the whole idea of the Fit4Future Platform. Simplification of legislation is extremely important for our SMEs which also dedicate their scarce resource to this important workflow.

BusinessEurope would encourage to raise this across the relevant Commission services and make necessary adjustments in order to maintain the credibility of the Fit4Future Platform which we strongly support.

## **1in-1out principle**

BusinessEurope consistently supports the 1in-1out principle application. We also believe that the major objective – control over regulatory burdens – should not be lost.

We take a good note of the report on the pilot projects in the Annual Burden Survey 2021 and acknowledge the challenges the European Commission is facing in terms of both the cultural change and methodological modalities to be deployed when applying the 1in-1out principle. However, it is also our duty to state that so far, the business community has not seen tangible results of the offsetting of burdens. It looks like the overall compliance costs are assessed in impact assessment analysis only for the *preferred* option, which in a way limits comparisons and the 1in-1out options. We also see a tendency to re-focus the 1in-1out application towards the search for justifications of the longer-term benefits of the newly proposed legislation rather than assessment of the compliance costs and needs for offsetting.

We can only reiterate our messages that “business-as-usual” in regulation initiatives is not an option given the multi-layer crisis environment of today, and that an effective 1in-1out principle was expected with the major legislative initiatives of this Commission in 2021 already.

## **Delegated acts**

In the context of regulatory burdens, as well as stakeholder involvement in the process, BusinessEurope finds numerous challenges in the process of drafting and adopting delegated acts. Very often delegated acts make the regulatory frameworks less certain and business environment in general less predictable, instead of doing the opposite as the Inter-Institutional Agreement on Better Law-Making requires<sup>1</sup>. Such unintended outcomes, we believe, are also the result of shortcomings in consultations with

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<sup>1</sup> “an integral tool for Better Law-making, contributing to simple, up-to-date legislation...”, p.26



stakeholders and lack of overall transparency in the process, like it was the case with the delegated act regarding technical screening criteria under the Taxonomy Regulation.

BusinessEurope is building a set of examples of the kind where the above-mentioned challenges are very significant and requiring corrections. You have been notified of our recent work and BusinessEurope [position paper](#) on the topic. We also draw the attention to the research on the matter that confirms our concerns in terms of trends (a recent report by Lund University of Sweden<sup>2</sup>).

Better regulation is key for the EU's success in its twin transition and resilience aspirations. It is also crucial in ensuring the business environment where our companies can thrive and compete internationally. We have to address the trends we have identified above, so that our competitiveness is not undermined, and we are ready to further assist you in this task.

Yours sincerely,

Markus J. Beyrer

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<sup>2</sup> [Transparency and stakeholder participation in executive EU lawmaking](#), Maria Strömvik & Jelle Verheij, 2022