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## Article

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Jan Blockx

# One In, One Out: The Increase of EU Legislation Will Lead to a Crisis of Enforcement

## KEY MESSAGES

- The volume of legislation is increasing, also in the EU, but enforcement resources are not
- This effectively means that in order to enforce new legislation, other legislation will need to be left unenforced: one in, one out
- When introducing new rules that need to be enforced, legislators should therefore consider which older rules may go unenforced
- This is particularly important for EU legislation as this usually relies on enforcement by the member states, making enforcement costs less visible

At least since the European Council meeting in Edinburgh in 1992, the European Union has aimed to pursue a program of “simplification” of EU legislation. In the past three decades, almost every College of Commissioners has repeated this objective, often inventing new acronyms to add weight to this program, from the 1996 SLIM (Simpler Legislation for the Internal Market) pilot project, to the 2006 ABR (Administrative Burden Reduction) objective, to the 2012 REFIT (Regulatory Fitness) program. Most recently, the Commission introduced the OIOO (One In, One Out) principle in its 2021 Better Regulation Communication: “when introducing new burdens, [it would] systematically and proactively seek to reduce burdens imposed by existing legislation” (European Commission 2021a).

Despite all these initiatives, the volume of EU legislation does not appear to have stopped growing. Precise figures are hard to come by, with the Commission’s latest own calculation of the size of the EU acquis dating back to the end of 2002, when a staff working document (European Commission 2003) estimated it to comprise 14,513 legal acts covering 96,999 pages in the Official Journal (OJ). Through a request for access to documents, I asked the Commission whether it holds a more recent calculation of the volume of the acquis, but the response was that no such document exists (European Commission 2024a). The Commission therefore does not know how much EU law there is, nor whether decades of simplification efforts have made a difference.

There is, however, little doubt that the volume of new legislation has continued to grow. For one, the length of the OJ has continued to increase over the last two decades. In 2004 (when the accession of 10 new member states increased the number of languages in which the OJ is published to 20), it comprised 759,590 pages, whereas in 2023 (when the number of languages had slightly increased to 24), it had grown by 150 percent to 2,008,061 pages (Publication Office 2024). Some of these additional pages may well contain codifications and recasts of previous legislation (so not all of this is necessarily “new” legislation), but the impression still remains that the volume is only increasing. This already seems to be the case at the start of the legislative process, with a recent study by Sekut and Markus (2024) of Bruegel finding that the amount and length of legislative proposals by the European Commission has continued to increase over the last 25 years, which presumably translates into more and lengthier legislative acts after amendment by the Council and the Parliament as well.

The growth in the volume of legislation is not unique to the EU, nor is the failure of attempts to curb this flood. A similar development has been noted in the United States, and many EU member states similarly see the length of their Official Gazette increase year by year. There are multiple reasons for this, including the increasing complexity of modern life, the tendency to see legislation as a panacea for all societal problems, the difficulty of achieving compromises between multiple stakeholders and political actors, etc.

## RULES WITHOUT STICKS

The proliferation of legal rules has many downsides. First and foremost are the compliance costs for legal subjects (often businesses), which hamper their ability to serve their customers, innovate, and compete on the world stage. Reducing compliance costs has indeed been one of the main drivers for the push for simplification described above. But the introduction of new regulations also creates adjustment costs for businesses and, especially if they happen often, may reduce legal certainty.

In theory, these costs imposed by new legal rules may be outweighed by the benefits that regulation brings, e.g., in terms of ensuring that products and services are safe, that harmful externalities are

avoided, and in overcoming market failures. But these benefits will accrue only if new regulations are not merely introduced, but also complied with, and this is very rarely taken into account.

Non-compliance is difficult to measure, but even studies performed by or for the Commission itself indicate that a significant share of EU rules is not complied with in practice. In the field of technology regulation, which I follow quite closely, this is readily apparent. For instance, Gineikytė-Kanclerė et al. (2022) investigated compliance of online platforms with the 2019 Platform-to-Business Regulation and found that out of the 290 platforms covered in the study, only 49 (17 percent) were assessed as being “significantly aligned” with that regulation, while the alignment of 128 platforms (44 percent) was qualified as medium level and that of 123 platforms (42 percent) as low level. Similarly, in the Commission’s own October 2024 Fitness Check on EU consumer law on digital fairness, it found that the EU consumer directives covered by the report had “limited” effectiveness due to “lack of compliance by traders (which leads to consumer detriment), ineffective enforcement, legal uncertainty, regulatory fragmentation, compounded by the increased complexity of the rapidly changing regulatory landscape with the arrival of new legislation” (European Commission 2024b).

Compared with national legislation, ensuring compliance with EU law faces an additional hurdle, because enforcement of EU law is rarely carried out by the EU institutions themselves, but is usually a matter for the member states. While there are limited areas of EU law where enforcement is undertaken by the European Commission or by EU agencies, for the most part, EU legislation provides for enforcement by member state authorities and courts.

This idea is in fact baked into some of the fundamental EU legal tools, such as the directive, a form of legislation that, in the words of Article 288 TFEU, “shall be binding as to the results to be achieved,” but it “shall leave to the national authorities the choice of forms and methods.” Directives therefore usually contain a set of legal rules, but – in order to take into account the differences that exist between national legal systems – member states can themselves provide for the tools to enforce these legal rules. The Court of Justice has also encouraged this approach through the doctrine of national procedural autonomy, basically allowing member states to choose their own enforcement tools for EU law, as long as these are effective and at least equivalent to those that exist for national legal rules.

In those circumstances, it is tempting for the EU institutions to simply impose enforcement obligations on EU member states, rather than providing for any enforcement mechanisms themselves. This temptation is all the greater in today’s tight budgetary climate, as for example attested in the recent legislative debate around the European Artificial Intelligence Act.

The European Parliament wanted a centralized European AI Office to take on much of the enforcement of the new rules, but there was simply no money for this (Bertuzzi 2023). As a result, the AI Office that was created was charged with more limited duties, and member states were instructed to appoint the relevant authorities to do most of the enforcement.

Except: the budgetary situation in the member states is no rosier than that of the EU. According to Eurostat (gov\_10dd\_edpt1), in 2023, the government debt of EU member states represented 81.7 percent of their GDP and budget deficits were on average 3.5 percent of GDP, comparable to how they were in 2011, after the financial crisis. Several recently elected EU governments have announced that improving the budgetary situation is one of their priorities. In those circumstances, member states cannot be expected to make additional budgetary means available for the enforcement of the AI Act. Instead, they will have to find these resources by withdrawing resources elsewhere. More policing of artificial intelligence will therefore likely mean less policing of the P2B regulation or of the EU consumer protection rules even though, as indicated before, enforcement is already pretty poor in these areas.

### ESTIMATING ENFORCEMENT COSTS

Enforcement costs are meant to be taken into account in Impact Assessments of new Commission proposals, but these estimates are not always very informative and may be far from reality. There are a number of reasons for this. First of all, like many other costs (and even more so, benefits) of regulation, the resources that will ultimately be required are difficult to estimate. This often leads the Commission to using a (broad) range of possible (enforcement) costs in its Impact Assessment, which obviously undermines the usefulness of such an estimate. A second very important limitation is that the Impact Assessment is made for the (options considered by the Commission that lead to its) legislative proposal, but not for the final legislative act that is adopted by Council and Parliament. If significant amendments are made to the legislative proposal, the enforcement costs may increase significantly.

This can again be illustrated by reference to the recently adopted AI Act. In the Impact Assessment accompanying its proposal (European Commission 2021b), the Commission estimated that, depending on the current setup of member state supervisory authorities, the AI Act would require between 1 and 25 extra full-time equivalents (FTEs) per member state. This is, of course, a very wide range: all



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member states combined, this implies between 27 and 675 FTEs – a huge difference in terms of enforcement costs. In addition, the European Parliament and the Council made amendments to the AI Act (e.g., expanding the compliance requirements for high-risk AI applications), which will likely require more enforcement resources, although no precise calculation has been prepared for this.

However, at the EU level, such a calculation is available. The Impact Assessment indeed estimated that, in addition to national enforcement staff, 10 FTEs would need to be hired at the EU level for support to the AI Board that is meant to ensure coordination between the national supervisors. During the legislative negotiations, this coordinating AI Board has been complemented by an AI Office, to be set up within the Commission, and it has been announced that 100 FTEs will be recruited by the Commission for this AI Office (Kroet 2024). At the EU level, the enforcement costs have therefore increased at least tenfold between the proposal and the final act.

Of the 100 FTEs needed for the AI Office, 80 will be recruited externally and 20 internally. While the former obviously have budgetary implications, the internal recruits also have costs: these people will indeed need to be removed from other positions, where they were (hopefully) also doing important work. It could be that their work in these previous positions was finished, but if that is not the case, then moving them to the AI Office effectively means that their previous work will no longer be done. Again: more policing of artificial intelligence means less policing elsewhere.

## POLICY CONCLUSIONS

Impact Assessments are meant to look at all impacts of legislation, including all types of costs, i.e., those imposed on legal subjects (businesses and citizens) but also on public authorities. The “one in, one out” principle, on the other hand, is (according to European Commission 2021a) concerned only with the administrative burden for businesses and citizens, and not with costs imposed on public authorities. This can be explained by its adoption in the context of reducing the regulatory burden on legal subjects. However, the “one in, one out” logic is all the more relevant in the context of (enforcement) burdens imposed on

public authorities as it is not merely a policy that can be pursued but an actual description of the impact of legislation. Very often, resources that will need to be devoted to enforcing the new rules will need to be taken away elsewhere. When it comes to enforcement, “one in, one out” is therefore not just a policy, but a fact.

There are obvious limitations to estimating enforcement costs of legislation, in particular in the EU. However, there seems to be little doubt that (mostly national) enforcement resources cannot keep up with the increase of EU legislation, especially in these tight budgetary times. As a consequence, the adoption of new EU legislation almost inevitably leads to less enforcement of old (EU or national) legislation. If legislators do not consider this effect, the introduction of ever more rules will merely lead to ever less enforcement – which will likely have knock-on effects on compliance as well. And legal rules that are not complied with merely have costs; no benefits.

## REFERENCES

- Bertuzzi, L. (2023), “AI Act Moves Ahead in EU Parliament with Key Committee Vote”, *Euractiv*, 11 May.
- European Commission (2003), *Technical Annex to the Communication of 11 February 2003: Updating and Simplifying the Community Acquis (COM(2003) 71 final) (ST 6591 2003 ADD 1)*, <https://data.consilium.europa.eu/doc/document/ST-6591-2003-ADD-1/fr/pdf>.
- European Commission (2021a), *Communication of 14 April 2021: Better Regulation: Joining Forces to Make Better Laws (COM(2021) 219 final)*, Brussels.
- European Commission (2021b), *Staff Working Document: Impact Assessment Proposal for a Regulation of the European Parliament and of the Council Laying Down Harmonised Rules on Artificial Intelligence (Artificial Intelligence Act) and Amending Certain Union Legislative Act (SWD(2021) 84 final)*, Brussels.
- European Commission (2024a), *Response of 2 August 2024 to Request for Access to Documents 2024/3847 (Ares(2024)5608120)*, on file with the author.
- European Commission (2024b), *Staff Working Document Fitness Check on EU Consumer Law on Digital Fairness (SWD(2024) 230 final)*, Brussels.
- Gineikytė-Kanclerė, V., L. Klimavičiūtė, B. Kudzmanaitė and L. Lechardoy (2022), *Final Report (D6) of Study on Evaluation of the Regulation (EU) 2019/1150 on Promoting Fairness and Transparency for Business Users of Online Intermediation Services (the P2B Regulation)*, <https://op.europa.eu/en/publication-detail/-/publication/d6a287b5-5116-11ee-9220-01aa75ed71a1/language-en/>.
- Kroet, C. (2024), “Commission’s Staffing and Financing of AI Office Raises Eyebrows in Capitals”, *Euronews*, 1 February.
- Publication Office of the European Union (2024), *Annual Activity Report 2023*, [https://commission.europa.eu/publications/annual-activity-report-2023-publications-office\\_en](https://commission.europa.eu/publications/annual-activity-report-2023-publications-office_en).
- Sekut, K. and J. C. Marcus (2024), “Simplifying EU Law: A Cumbersome Task with Mixed Results”, *Bruegel*, 23 September, <https://www.bruegel.org/analysis/simplifying-eu-law-cumbersome-task-mixed-results>.