17 steps towards deregulation

Corporate Europe Observatory

A guide to how the new Commission's deregulation tools can undermine the public interest

In December a new Commission took office. Under the slogan of 'competitiveness', they will see it as their main task to reduce the 'regulatory burden', 'cut red tape', and remove 'obsolete' rules and laws. To some, that may sound appealing. After all, who wants meaningless bureaucracy? Unfortunately, what they are gearing up for is much more than that. This single-minded deregulatory quest will hack away at public interest rules – from social rights to the environmental protections – that corporations decide are too 'inhibiting'.

There is no finished list of laws that will be axed, nor obligations on companies that will be stricken. What we have is a daunting collection of initiatives the new Commission will take – described in the "guidelines" for the new Commission written by Commission President Ursula von der Leyen, the "mission letters" she wrote to all Commissioners about their tasks, the new Commissioners' replies to questions from the European Parliament, as well as in the Competitiveness Compass from 29 January. All that, combined with knowledge about what corporate lobby groups have been demanding recently, give us some clear indications about where the EU is heading.

Here we list 17 different ways the deregulation campaign will unfold. In the table, we have divided them into three categories, each with their own colour:

RED= **Systemic hurdles** for EU level regulation – and roll-back – that will be applied across the board, ie not limited to a specific policy area.

GREEN= **Regulatory escape routes** that will allow some companies to avoid regulation.

BLUE= **Hurdles for national level regulation** – and roll-back

Deregulatory initiatives	Sources	Comments on deregulation risks
1. All existing EU-laws can potentially be scrutinized and changed 'Stress-testing the acquis': ie everything adopted can be brought into question. This can happen through "omnibus laws".	General text in all mission letters; Valdis Dombrovskis is to coordinate this.	One of the major projects is a "stress-test of the Acquis" (ie a review of *all* EU laws) with a view to "eliminate overlaps and contradictions". This is a project "to remove obsolete, duplicate, redundant and inefficient rules, including on reporting requirements". "Stress-testing" of all existing EU legislation in order to review it creates major risks. It is reminiscent of the demand from a coalition of business organisations, dominated by the chemicals industry, the Antwerp Declaration, that demands an Omnibus Law – a legal obligation to review all existing law – to get rid of everything (eg safety procedures) thought to hamper competitiveness. So far, there is an Omnibus law under way that will weaken three important EU laws to regulate big companies and investments, all of which were adopted only recently (the Corporate Sustainability Reporting Directive, Corporate Sustainability and Due Diligence Directive and the Taxonomy for sustainable investments). Earlier programmes to delete or drop 'obsolete' rules, such as REFIT, quickly proved to target laws to protect the environment.
2. Making regulation simpler 'Simplification' as an end in itself?	General text in all mission letters	"New legislation simpler and more accessible, ensure principles of proportionality, subsidiarity and better regulation," the mission letters read. What's not to like? The problem is that the underlying agenda is about simplifying life for businesses. Sometimes regulating in the public interest lead to complex legislation – simplifying may please some businesses, but it can undermine the objective of the law. Several Commissioners have emphatically stated that simplification is not

		deregulation. However, that is at odds with their own definition. According to the Competitiveness Compass, simplification implies “a regulatory system based on trust and incentives rather than control.”
3. Two filters to prevent tabling of tougher regulation Implementation of "SME and competitiveness checks"	Valdis Dombrovskis	The Commission have been doing these tests for a while. They work like this: draft ideas, eg draft laws, are scrutinized by ‘experts’ – with a business-friendly lens – to see if they would have a negative impact on SMEs or on competitiveness more generally. If that is the case, the outcome may be that they are dropped or altered significantly.
4. If you add obligations, remove an existing one Strengthen the application of the “one in, one out” rule when proposing new legislation	Valdis Dombrovskis	The “one in, one out” principle means that if you apply new obligations to companies, something existing will have to go. This blunt approach was tried out in the last Commission term (2019-2024), but in a manner not strict enough according to corporate lobby groups. Adding it to the list for the next term, this time in a strengthened form, could be yet another axe to cut necessary regulation. Say we adopt stronger rules on energy efficiency, the Commission then will set out to remove something else from the “regulatory burden”. Could be more lax rules on safety at work, or perhaps the annulment of obligations to check toxicity of waste or wastewater.
5. Scrapping reporting requirements of companies related to enforcement of EU rules - Reducing reporting obligations by 25% / 35%	General text in all mission letters	For some legislation, reporting requirements are crucial, for instance the new EU due diligence legislation. If reporting is taken out, enforcement will be almost impossible. A recent article from Dutch investigative media Follow the Money uncovered a clash between civil servants and their superiors in the Commission on this point. Civil servants underlined that reducing reporting obligations would cripple enforcement of laws adopted to protect the public interest. The objective is to cut no less than 25 percent of reporting obligations for larger companies and 35 percent for SMEs. It seems unavoidable that such deep cuts will lead to weaker enforcement.

6. Helping business drown parliament's proposals in cost-benefit analysis A new Interinstitutional agreement on "simplification and better law making", or a renewed commitment to forceful implementation of an earlier agreement.	Valdis Dombrovskis	In the coming term, the Commission wants to "ensure that each institution assesses the impact and cost of its proposals and amendments in the same way with a simple and clear methodology". This is a lobby demand from big business lobby groups ERT and BusinessEurope. It would make parliamentary amendments subject to the kind of business-friendly impact assessments the Commission uses. Impact assessments became mandatory in the EU with the Nice Treaty (1999), due to pressure from some business sectors, spearheaded by the tobacco industry. The strategy was to insert an obligation to do cost-benefit analyses that would dissuade the Commission from regulation that would entail a cost for industry. On countless occasions that has been true for the Commission. However, the European Parliament has not had this requirement. Despite the conclusion in 2016 of an agreement across the three main institutions (Commission, Parliament, Council), the European Parliament has not done impact assessments on big amendments. Now the Commission will try again. Should they succeed, it could have major implications for politics in the European Parliament. It would open a new arena for lobbying battles as it could allow lobby groups to intervene and flood the Parliament with assessments that claim a decision would be very costly. It could slow down decision-making and dissuade MEPs from tabling amendments that could cost companies in one way or the other.
7. Fast permitting and approvals	The Competitiveness Compass	The Commission vows to make permitting and approvals of projects and access to EU funds "faster and cheaper". This includes mining and projects concerning the energy intensive industry, which risks promoting greenwashing and problematic approaches to the energy transition that actually cause major environmental harm. It also includes faster consideration of hazardous chemicals under the chemicals regulation (REACH). Considering the current support for the chemicals industry, this seems to entail a more lenient approach to hazardous chemicals.

8. Exempting 99% of companies from EU rules A possible "dedicated SME passport" to "reduce administrative burden and costs".	Stéphane Séjourné	Regulatory exemptions for SMEs, that make up a whopping 99 percent of all companies, and employ two thirds of all wage earners in the EU? Sometimes SMEs are simply let off the hook by legislators, as with the Due Diligence Directive that sets out to ensure that European companies respect human rights and do not harm the environment through their investments and purchases. But to do that on a large scale can do a lot of damage. On an earlier occasion, the European Commission proposed in 2011 to strike existing laws on safety at work for certain sectors and for SMEs.
9. Exempting even more companies from EU rules Create a new category of small midcap companies and "assess whether existing regulation unjustifiably hinders their development"	Stéphane Séjourné & the Competitiveness Compass	Midcap companies are larger than SMEs: 250-3,000 employees. If they are added to the SME category, only a few very big companies will not be covered by the exemptions for SMEs the Commission would like to see. According to the Competitiveness Compass, a new set of rules for midcaps, described as “tailored regulatory simplification”, will be introduced. That will lead to a three tier regulatory system: the standard rules which will apply only to big companies, a less strict set of rules for midcaps, and finally an even less strict set of rules for SMEs.
10. Letting business choose between rule sets Parallel EU rules (called a “28th regime”) to select from instead of national ones, to "allow companies to benefit from a simpler, harmonised set of rules".	Michael McGrath	Harmonisation, ie the application of identical rules across member states, is not always as effective as intended. One of the ways the new Commission will deal with that is to enable companies to choose a parallel set of lighter EU-level rules instead of national level ones. Actually, the idea is not new. It has been experimented with on numerous occasions. For example, in 2010 the Commission proposed to use it as an instrument to harmonise consumer protection: a separate set of rules would be available for businesses that would prefer to select European rules rather than national ones. That idea was rejected by the association of European Consumers’ Organisation, BEUC, that saw the idea as a way for companies to evade strict rules in some member states. While earlier attempts were unsuccessful, now the Commission is keen to

		significantly elevate a 28th regime (so, a set of rules that works in parallel to the national laws of the 27 member states) to make "innovative companies grow". With the Competitiveness Compass, this project is taking shape, and it is set to be far reaching. It is to include the option of sidestepping rules on insolvency, as well as "labour law, and tax law." This could make the 28th regime a powerful instrument in that the EU's mandate in these areas are limited as it stands.
11. Transposing the EU competitiveness agenda into national policies The new Competitiveness Coordination Tool is an attempt to make EU priorities to strengthen competitiveness take effect at the national level.	Valdis Dombrovskis	The "Competitiveness Coordination Tool, as proposed in the Draghi report, is to operate in conjunction with the future European Competitiveness Fund." It is to become a key instrument in making EU priorities for competitiveness a cornerstone of national policies as well. According to a message from Commissioner Dombrovskis to the European Parliament, the Competitiveness Coordination Tool is to be an important institution in the coming years. It is to "translate EU-wide competitiveness priorities into coordinated national policies, ensuring public and private financing for each strategic priority." This follows a proposal in the Draghi report which reads: "The new framework would address only EU-level strategic priorities – "EU Competitiveness Priorities" – which would be formulated and adopted by the European Council. These priorities would be defined at the beginning of each European political cycle in a European Council debate and adopted in European Council conclusions. Thereafter, the coordination of all economic policies relevant to the EU's agreed strategic priorities would be merged into the new coordination framework". According to the Draghi report, the "involvement of all relevant stakeholders, Member States, experts, the private sector, EU institutions and agencies is essential to define and use the most agile and efficient model of governance, depending on the area concerned." This is confirmed in the Competitive Compass. Again, then, the private sector – typically corporate lobby groups – are to help define the priorities.

12. Trimming rules and procedures at the national level 'Implementation Dialogues' with 'stakeholders' is about giving businesses an advanced and powerful complaint box about national implementation of EU-rules.	General text in all mission letters	There are to be two procedures every year to help "align implementation with realities on the ground". These "Implementation Dialogues" will be a space where corporate lobby groups are able to point out which rules or procedures linked to implementation of EU laws should be attacked by the Commission. According to Valdis Dombrovskis – set to become the new Commissioner for 'Simplification', the dialogues should feed into the Commission's 'stress testing' too, ie the results will become part of its work programme. To illustrate what this could mean: in some member states there are local restrictions on the building of huge supermarkets, or hypermarkets. This can be to protect smaller shops, or because there are plenty of them already. Such rules are unpopular with some corporate lobby groups, and they want the Commission's help to do away with them with a reference to the EU rules on services. The Implementation Dialogues is a new and potentially forceful way to enable this. The Competitiveness Compass stresses the key role of the Implementation Dialogues.
13. Removing "hurdles" companies face with EU rules "Reality Checks" is the twin of the Impact Dialogues, only this time it is about complaints over EU rules.	Valdis Dombrovskis	The new Commission will "implement a new consultation approach, called Reality Checks, that will collect first-hand information from a selection of stakeholders in given areas to identify hurdles they face when implementing EU rules." It is about hurdles faced by companies or administrations, more "on the ground", as opposed to the Implementation Dialogues that focus on national implementation through laws and procedures. As with the Implementation Dialogues, the Reality Checks are talks with businesses to identify hurdles, that will then go on to form part of the plans of the Commission, including the "stress testing" exercise.
14. A hit list to take aim against ambitious national rules	General text in all mission letters	It is unclear what these reports will add, but they should spark fears that they will be used against very sensible national initiatives, such as the French plans to ban domestic flights and Dutch plans to shrink Amsterdam's massive airport, Schiphol. In both cases, the Commission stepped in. The French ban was then limited in time and scope, and the Dutch plans were scrapped.

Annual progress report on Enforcement and Implementation		In recent years, we have seen a big campaign from corporate lobby groups to do away with “goldplating”. Goldplating is when member states have national rules that go further than existing European rules. The reports should be seen in that context: they may be about creating comprehensive hitlists to roll back regulation that is actually in the public interest.
15. Removing Single Market barriers across the board A horizontal Single Market Strategy "to speed up the removal of barriers".	Stéphane Séjourné	The Commission will develop “a horizontal Single Market Strategy for a modernised and deeper Single Market” and “ensure the existing rules are fully implemented and speed up the removal of barriers”. In the Competitive Compass, the ambition is more clearly spelled out: there, it is about removing “remaining barriers.” The approach to the Single Market is simplistic and risky: in the texts produced in the context of the new Commission, there is no attempt to analyse if the national measures considered ‘barriers’ are necessary to protect eg social rights or the environment. There is a risk, then, that a broad-based programme will be used to target local or national government rules and standards that go beyond the EU standards or which industry sees as ‘barriers’.
16. A systematic hunt to remove ambitious regulation at national level A possible Single Market Barriers Prevention Act	Stéphane Séjourné	“You should consider the need for a Single Market Barriers Prevention Act to fill gaps in the existing ex ante instruments, without reopening existing directives.” This carries a strong risk for local or national government rules and standards. In 2019 the Commission proposed a new law to enforce EU rules on services to prevent ‘barriers’. Amazingly, the proposal gave the Commission veto power over local, regional and national decisions on services. The proposal was defeated due to resistance from mayors and city councillors and from national parliaments. That is why a “Single Market Barriers Prevention Act” is one to watch.
17. Fines if member states do not liberalise markets	Michael McGrath	“You will steer work to add a Single Market dimension in the Rule of Law Report to address rule of law issues affecting companies, especially SMEs, operating across borders.”

A "Single Market dimension in the Rule of Law Report"		Von der Leyen's Political Guidelines stated that "a Single Market dimension will be added to the report. This will address rule of law issues affecting companies, especially Small and medium-sized enterprises (SMEs), operating across borders." Including Single Market enforcement in the EU's Rule of Law procedures would enable the use of financial sanctions – problematic if used to target local or national government rules and standards that industry sees as 'barriers'. If, for instance, some member states continue to ban more products that contains classes of PFAS, the 'forever chemicals' and endocrine disruptors, than at the EU level, the threat of a fine can bring them into line. EuroCommerce is among the lobby groups that have demanded the expansion of the Rule of Law Report to cover industry complaints.