

Simplifying EU law: a cumbersome task with mixed results

The volume and complexity of EU laws continue to increase despite measures taken in previous mandates to make existing legislation less burdensome

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Simplifying European Union law, improving its quality and reducing the burden of laws and regulation on EU businesses and citizens has long been a goal of the European Commission. As one five-year legislative term ends and the next begins, it is appropriate to take stock of whether simplification measures have worked as intended.

Regulatory burden has many different elements. In this analysis, we confine ourselves solely to some of the most obvious and rudimentary:

- Has the volume of new EU law increased on balance?
- Have there been noteworthy reductions in the volume of EU law, or simplifications?
- Has the annual rate of increase in the volume of EU law increased, decreased or remained roughly stable?

The degree to which EU law is burdensome is a more complicated question than any of these. But if the volume of law is growing, the level of burden is unlikely to be shrinking.

EU firms perceive EU law as growing in complexity

A survey by the European Investment Bank (EIB) indicates growing concern on the part of businesses. 60.2 percent of large firms and 65.4 percent of small and medium-sized enterprises (SMEs) perceived business regulations such as licences and permits, together with taxes, as a serious impediment to investment (Marcus and Rossi, 2024). It

is not surprising for businesses to complain about regulation, but in this case, we think that there are good grounds.

A study for the European Parliament (Rzepecka *et al*, 2024) on the impact of EU legislation such as the digital and green transitions on SMEs – which tend to feel regulatory burden the most – found that one should take seriously the concerns of SMES on *"the introduction, in a short period of time, of a large number of new EU rules driving the digital and green transition [and] about the cumulative impact of the changes and the perception that rules may not be fully consistent in all cases"*. Even though many of the new measures include articles that seek to reduce the impact on SMEs, those provisions are only partly effective because SMEs are often suppliers to larger firms that are obliged to flow their obligations down to their suppliers (Rzepecka *et al*, 2024).

A rough count based on the digital legislation dataset provided by Zenner *et al* (2023) shows a dramatic increase in the pace of new EU laws involving digitalisation after 2015. This corresponds to the point when the European Commission introduced its Digital Single Market strategy (European Commission, 2015). In 2000, there were only seven such laws in place. In 2011, there were still only 20 such laws. More than three quarters of the growth to 88 laws in 2024 took place after 2011 (Marcus *et al*, 2024). Perhaps even more important, a number of the laws enacted during the past two five-year terms can be expected to be particularly burdensome on the firms that they impact.

Attempts to simplify EU legislation

In his 2014 Political Guidelines, then Commission President Jean-Claude Juncker already placed a premium on achieving *"a European Union that is bigger and more ambitious on big things, and smaller and more modest on small things"* (Juncker, 2014). This goal was clearly reflected in the Commission's Work Plan for 2017, which announced:

"This year we are proposing 19 withdrawals of pending legislative proposals which have become outdated, and we will repeal 16 pieces of existing legislation which have become obsolete ... Many of the key initiatives we will present in the next year follow regulatory fitness and performance reviews (REFIT) and will update and improve existing legislation so it continues to achieve its objectives effectively and without undue burdens."

One tangible result of Juncker's emphasis on simpler and better EU law was a substantial update in 2016 to the Inter-Institutional Agreement in which the Commission, Council and Parliament committed to cooperatively implement good legislation. Of the ten sections within the Inter-Institutional Agreement, one entire section deals with simplification ¹.

The three institutions jointly committed "*... to cooperate in order to update and simplify legislation and to avoid overregulation and administrative burdens for citizens, administrations and businesses, including SMEs, while ensuring that the objectives of the legislation are met*". Regrettably, the Parliament and the Council have done relatively little to implement the ambitious Interinstitutional Agreement. Thus, many of the objectives are words that have not been followed up with deeds.

Under the von der Leyen Commission, the desire to reduce the regulatory burden has been largely transformed into a 'Think Small' principle and a 'One in one out' principle. Both programmes are substantially under-performing (Marcus and Rossi, 2024). The study for the European Parliament by Rzepecka *et al* (2024) observed euphemistically that the 'Think Small' principle "*... is often seen as an administrative, rather than substantial, procedure at European level, and there is room for improvement in its application*".

'One in one out' – while a well-intentioned programme – needs serious re-thinking. It seeks to reduce the *administrative* burden of new laws, thus ignoring the *potentially vastly greater costs of transition and of implementation* of those laws. Even within this narrow focus, it is measured in ways that are largely irrelevant, since it is based on administrative costs of the law *as proposed*, which are often far less than the costs of the law *as enacted*. Actual savings in any case are minimal relative to what is needed (Marcus and Rossi, 2024).

Measures enacted per five-year mandate

It is relatively straightforward to analyse the number of legislative proposals put forward by the Commission per year or per term ². While there was a steady increase in the number of legislative proposals from term-to-term, there was a marked break during the Juncker term. The number of legislative proposals increased by 16 percent

from the Prodi Commission to the subsequent Barroso I Commission. It increased by an additional 14.2 percent from Barroso I to Barroso II, for a combined increase of about one third (32.6 percent) for the two terms (Figure 1).

The Juncker Commission explicitly sought to reduce the number of legislative proposals. This appears to have led to a reduction of some 24 percent in the number of legislative proposals in comparison with Barroso's second mandate. Considering, however, that the volume of new legislative measures might otherwise have been expected to increase, the real reduction was significantly larger.

In von der Leyen's first mandate, however, the number of legislative proposals resumed the previous pattern of growth – it was 14 percent higher than under Juncker, but it started from a lower base. At the same time, the number of proposals under von der Leyen was 13 percent lower than in Barroso's second term, with the lower production in this case quite possibly more the result of the COVID-19 pandemic rather than of any conscious attempt to reduce the amount of new legislation.

Figure 1: Number of Commission legislative proposals per five-year term

Source: Bruegel based on data from EUR-Lex. Data extracted on 28/08/2024.



Complexity of the laws enacted per five-year mandate

If the Commission were merely scoring itself based on the number of legislative measures introduced, it could obviously game this metric by introducing fewer measures, but measures that are longer and more complicated. Has this in fact been the case?

To some extent, yes. If we look at the composite length of the active text of legislative proposals (articles plus annexes, ie the active text), they have grown in each of the five legislative terms (Figure 2). Under Prodi, the average length was 4,501 words, while

under von der Leyen, it was 8,582 words. From Prodi to Barroso II, the combined average length of articles and annexes increased by 76 percent. From Barroso II to Juncker, there was a decline in average length of just 1.4 percent, followed by a modest increase of 9.7 percent in von der Leyen's first term.

Preambles (ie recitals), financial statements and explanatory memoranda have also grown, but these should not translate into increased regulatory burden.

Figure 2: Composition of legislative proposals: average number of words per section

Articles + Annexes Articles Annexes Preamble Explanatory Memorandum
Financial Statement

Source: Bruegel based on data from EUR-Lex. Considers only proposals under the ordinary legislative procedure (previously, the COD), which do not include amendments and are not recasts nor codifications. Numbers reflect the average number of words in the different sections of a legislative proposal.



Repealing some laws, simplifying others

Perhaps the most dramatic way to reduce regulatory complexity is to repeal laws completely. Consistent with the trend in the number of laws that were introduced, the rather deregulatory Juncker Commission repealed more laws outright than any other Commission before or since. The number of measures repealed under the von der Leyen Commission is closer to what was typical in previous five-year terms. In some cases, new laws replaced the laws that were repealed; thus, not every repeal constitutes a net decrease in complexity.

Figure 3: Number of repealing acts and total numbers of repeals by Commission

Number of Repealing Acts Total Number of Repeals

Source: Bruegel based on data from EUR-Lex.

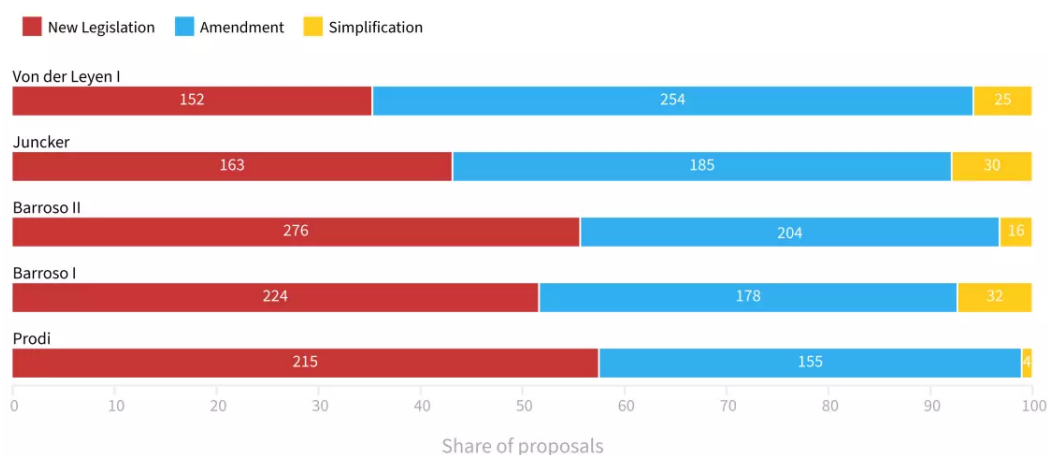


Not all legislative measures increase complexity. Codifications seek to simplify existing laws. A codification consolidates all the provisions of an existing legal act and its

amendments into a new legal act; a recast goes further by incorporating substantive amendments along with the consolidation.

However, very little of this type of simplification was done, probably because it is hard work and because politicians are unlikely to feel that this kind of work endears them to their voters. The von der Leyen Commission prepared 17 recasts and 8 codifications. The Juncker Commission proposed 22 recasts and 8 codifications. The Barroso II Commission put forward only 2 codifications and 14 recasts (Figure 4).

Figure 4: Codifications, recasts and amendments



Note: Amendment means any non-recast proposal which amends previous legislation. Simplifications are recasts and codifications. New legislation refers to laws that are neither codifications, recasts, nor amendments. Data extracted on 28/08/2024.



Conclusions

Judged solely from the crude criteria of the net number of new laws introduced and the length of those laws, limited progress has been made to date in simplifying laws and reducing regulatory complexity. The number of new laws dropped by 24 percent during the Juncker five-year mandate, when significant emphasis was placed on regulatory simplification. This is noteworthy compared to the 14 percent to 16 percent growth from one legislative term to the next that otherwise characterises the long-term trend since the year 2000.

While many laws have been repealed and others have been simplified, new laws have been introduced at a substantially faster pace than the frequency with which old laws are repealed. Moreover, the length of the active text in laws (and presumably their complexity) continues to grow.

We would like to express our appreciation to our former Bruegel colleagues Catarina Midões and Adriaan Schout for their earlier unpublished work on this topic (Midões, C. and A. Schout, 2019, 'Has the legislative production changed from the Barroso II to the Juncker Commission?'). Their methodologies and findings were a major contribution to our study.

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Endnotes

1. The Interinstitutional Agreement between the European Parliament, the Council of the European Union and the European Commission on Better Law-Making is available at http://data.europa.eu/eli/agree_interinstit/2016/512/oj.
2. Legislative proposals are generally published online and are available via <https://eur-lex.europa.eu/homepage.html>.

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