Deregulating Better Regulation

The Constitutional Stakes of the Commission's 2026 Reform

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29.04.2026 doi: 10.59704/640336d7bff5903b

The European Commission's Communication *A Simpler, Clearer and Better Enforced EU Rulebook* is the most structurally ambitious reform of EU policymaking since the launch of the Better Regulation agenda in 2002, extending its scope for the first time beyond the design of new initiatives to cover their review and enforcement.

Where previous Better Regulation reforms sought to strengthen the evidentiary and consultative foundations of Commission proposals – progressively tightening procedural discipline in service of evidence-based governance -, the 2026 Communication signals a qualitatively different ambition. Rather than improving EU lawmaking, it seeks to retrofit it to the new imperatives of speed and agility, thus realigning the regulatory framework downward to match, and in so doing, legitimate the Commission's increasingly derogatory practice of curtailed impact assessment and attenuated consultation. Yet this process of normative regression risks transforming Treaty-mandated procedural obligations, such as public consultations and evidence-collection, into discretionary administrative choices, insulating from judicial review precisely the departures from proportionality and participatory democracy that the Court of Justice has progressively hardened into constitutional requirements.

This preliminary analysis assesses the Communication's major novelties along three dimensions: (1) Ex ante: Designing EU law; (2) Ex post: Regulatory Deep Cleaning; and (3) Enforcement. Before turning to these three dimensions, it is necessary to situate the reform in its political and institutional context.

A Genealogy of Better Regulation

The European Commission published its 2026 Better Regulation Communication on 28 April 2026, against a backdrop unlike any that had shaped its predecessors. The 2002 launch of the Better Regulation agenda responded to concerns about regulatory quality and the democratic legitimacy of EU lawmaking. The 2015 Juncker-era reform responded to political pressures to demonstrate institutional restraint and accountability. The 2021 Communication, shaped by the COVID-19 pandemic, sought to embed sustainability, strategic foresight and the twin transition into the policy cycle. Each of these moments was significant, but essentially incremental: they refined the toolkit without fundamentally altering its regulatory philosophy or scope.

The 2026 Communication is different in kind. It emerges from a specific political conjuncture: a geopolitical environment defined by US trade pressure, security competition and democratic backsliding; and a political mandate explicitly oriented around competitiveness rather than regulatory quality as the organising telos of EU governance. This changes the standard against which procedural safeguards are understood (and interests they are meant to serve): not whether they ensure evidence-based and participatory lawmaking, but whether they slow down the Commission's response to competitive and geopolitical pressures. This shift has an immediate institutional antecedent. The Commission's first year was defined by the 2025 omnibus packages, combining substantive policy reversals across sustainability, environmental protection, food safety and digital rights, adopted under urgency procedures without standard impact assessments or public consultation. The European Ombudsman's November 2025 findings in three related cases

documented insufficient justification for claimed urgency, inadequate consultation (particularly the exclusion of civil society) and failure to conduct mandatory climate consistency assessments. The Commission's response, published in February 2026, acknowledged transparency failures but declined to withdraw or revise the offending proposals. The 2026 Communication is, in this sense, the institutionalisation of that first-year practice. Rather than treating the omnibus experience as a cautionary episode requiring constitutional correction, it treats it as a template to be formalised, refined and extended.

Ex Ante: Designing EU Law

Tiers of Impact Assessment

Historically, the EU Commission committed to prepare an impact assessment for all initiatives likely to have significant economic, environmental, or social impacts regardless of whether legislative and non-legislative acts, or revisions of existing legislation. Now, the duty to run an impact assessment varies depending on the *nature* of the initiative and expected *impact*. Only "major" new legislative initiatives or "substantial revisions" require a full IA accompanied by a qualified Regulatory Scrutiny Board (RSB) opinion. Instead, for "targeted initiatives" (defined as those that "do not significantly alter the policy objectives of existing legislation and propose changes that aim to optimise its effectiveness and efficiency"), only a lighter IA is required, subject only to an RSB recommendation rather than a binding opinion. This downgrades the RSB's quality review and its broader oversight role on those proposals.

What counts as a "new" initiative, "significant impact", or "targeted initiative" is determined by the Commission's own characterisation of its proposals. This gives the executive considerable discretion to downgrade the applicable evidentiary and consultative standards simply by framing substantive reform as "optimisation". The 2025 omnibus experience, in which measures substantially altering the scope of CSRD, CSDDD and the Common Agricultural Policy were characterised as simplification, illustrates precisely this risk.

Institutionalising Urgency as a Procedural Exemption

The Communication formalises urgency as a standing procedural category with two distinct tiers, each carrying different (and progressively diminished) safeguards. Under the *accelerated* pathway, "genuine emergencies" defined on the basis of "their sensitivity" and "possibility of detrimental consequences of delayed action" free the Commission from any procedural obligation, except when the initiative may have an expected significant impact. In that case, and "where feasible", an IA "may be prepared". In any event, the RSB's review of that IA must "account for required timelines" and consist of recommendations, not qualified opinions. Moreover, in lieu of public consultation, the Commission will "in principle" consult through a call for evidence, potentially supplemented by targeted consultations including reality checks. The 12-week minimum consultation period (the existing standard) is effectively suspended.

Under the additional *derogation* procedure, applicable in "exceptional circumstances where the need for urgent action is so acute that proposals must be adopted within an extremely compressed timeframe", the Commissioner responsible for better regulation may grant derogations from IA, consultation and RSB scrutiny. In place of these safeguards, the Commission commits to publishing an "analytical staff working document" within three months from publication.

This suggests that, first, the RSB is explicitly excluded from reviewing whether the urgency classification is justified. It reviews only the quality of whatever evidence is produced under the chosen tier, and never on the threshold question of whether that tier was appropriately invoked. This is a fundamental gap: the body best placed to provide independent quality control is excluded from the decision that most determines the intensity of that control. Second, the listed criteria for triggering the accelerated pathway include "political context creating a need for urgent action", which equates to the category of self-generated urgency that the Ombudsman found to constitute maladministration in November 2025, and that the Court's case law – from Afton Chemical through to the

Mobility Package judgments – treats as insufficient justification for departing from procedural requirements.

Attenuating the Consultation Obligation

The 2026 Communication significantly alters the consultation framework. First, under the once-only principle, the Commission commits to consulting the public only once per initiative, either through a call for evidence or a questionnaire. Second, and more consequentially, when a call for evidence has already been conducted, the standard 12-week public consultation questionnaire "may be reduced by up to six weeks". This reduction is presented as addressing stakeholder fatigue. But it has the structural effect of making the lighter call for evidence, a document-based instrument that does not require *representative* stakeholder engagement, a procedural substitute for the broader, conventional consultation.

This raises the question of whether this new policy may be compatible with Article 11(3) TEU's requirement of "broad consultations with parties concerned", insofar as this type of targeted consultations systematically favours well-resourced stakeholders capable of engaging at any format and timeline.

The ex ante reforms thus fail on three critical aspects. First, as anticipated, they fail to codify objective, legally binding criteria governing when the Commission may legitimately dispense with an IA or limit consultation. The urgency criteria listed are broad, include political context, and are not subject to independent review. Second, they establish no dedicated legal regime for omnibus legislation despite its demonstrated capacity for constitutional abuse. Third, they curtail rather than strengthen the RSB's independence and quality oversight prerogatives.

Ex Post: The Regulatory Deep Cleaning

Ex post evaluation – that is to assess whether a specific intervention was justified and whether it worked as expected in achieving its objectives and why – has historically been the Cinderella of Better Regulation. It has been delegated to advisory platforms, REFIT under the 2015 reform, the Fit for Future Platform under the 2021 reform, producing consultative, non-binding opinions. The 2026 Communication instead commits the College of Commissioners to regular progress reviews, embeds a "deep cleaning" in annual reporting on simplification, implementation and enforcement, and explicitly anticipates legislative outputs (including "the withdrawal of individual Commission proposals") and, implicitly, further omnibus packages. In addition, it launched a formal Action Plan for Regulatory Deep Cleaning, based on pre-selected twelve priority areas, and which will only be supported by a newly-created Simplification Platform.

No previous Better Regulation Communication had deployed its framework as a systematic instrument for reviewing and, potentially, dismantling the existing acquis.

Indeed, the twelve priority areas encompass the core of the EU's environmental, social and digital acquis and they map with striking precision onto the sectors targeted by the 2025 omnibus packages, from sustainability reporting (CSRD, CSDDD), food safety, agricultural regulation, chemicals, environmental assessment to digital rights. Parenthetically, the selection of these twelve priority areas was itself devised outside the very procedural safeguards the Better Regulation framework is supposed to impose.

The Deep Cleaning thus risks becoming the most consequential instrument of EU regulatory retrenchment since the Single Market programme, deployed under the legitimising framework of Better Regulation but systematically insulated from the procedural discipline that framework exists to impose.

Enforcement: Towards Federal Discipline?

The 2026 Communication marks a first in the history of Better Regulation: the explicit extension of the framework to cover enforcement, long identified as the weakest link in the effectiveness of EU law. First, the Commission commits to more assertive use of its infringement powers, that is faster action on late transposition, stricter terms during proceedings; a pledge that sits uneasily against the well-documented decline in infringement actions over the past two decades, chronicled by Kelemen and Pavone as a struc-

tural feature of Commission self-restraint driven by political accommodation with Member States.

Second, under the banner of "simplicity by design", the Communication seeks to reduce enforcement deficits upstream, through "regulatory discipline", that is the choice of the legal instrument (favouring regulations over directives), the degree of harmonisation pursued (full over partial harmonisation) and downstream, through better coordination of national enforcement authorities, harmonisation of sanctions to a sufficient degree, and robust Commission fact-finding powers. The underlying logic is that better-designed law is self-executing law: if Member States have less discretion in transposition, they have less room to underenforce, or over-implement (the so-called gold-plating phenomenon) – another major target of this Communication.

These indications hint toward an embryonic "federalisation" of the enforcement dimension of the EU rulebook. By systematically favouring regulations over directives and full over partial harmonisation, the Communication does not merely address the weakness of decentralised enforcement, but risks reconfiguring the constitutional architecture of EU lawmaking itself. When combined with harmonised sanctions and strengthened Commission fact-finding powers, this may shift the centre of gravity of the EU's compliance architecture upward in ways that raise delicate questions of competence allocation under Articles 4 and 5 TEU, subsidiarity under Protocol No. 2, and the proportionality of instrument choice.

Better Deregulation and its Discontents

Taken together, the 2026 Communication reveals a coherent but constitutionally problematic logic. The EU Commission's procedural safeguards are relaxed upstream, existing EU law is systematically reviewed midstream, and EU law enforcement federalised downstream, all under the legitimising banner of Better Regulation.

The risk is not merely one of administrative quality of EU rulemaking but of constitutional regression: Treaty-mandated obligations of proportionality, participatory democracy and fundamental rights protection risk being reclassified as discretionary management tools, adjustable to political circumstance.

The European Parliament and the Council, as parties to the Interinstitutional Agreement on Better Law-Making, retain both the capacity and the constitutional responsibility to insist on full procedural compliance in legislative negotiations and to refuse urgency classifications that the Commission treats as immune from inter-institutional challenge. Whether they will do so is the defining Better Regulation question of this Commission's mandate; one that, if they do not, only the Court of Justice can resolve, most likely at the demand of those whose procedural rights this reform quietly extinguishes.

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SUGGESTED CITATION

Alemanno, Alberto: Deregulating Better Regulation: The Constitutional Stakes of the Commission's 2026 Reform, Verfassungsblog, 29.04.2026, doi: 10.59704/640336d7bff5903b.

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Langzeitarchiviert bei IntRechtDok unter: doi.org/10.17176/20260429-173441-0.