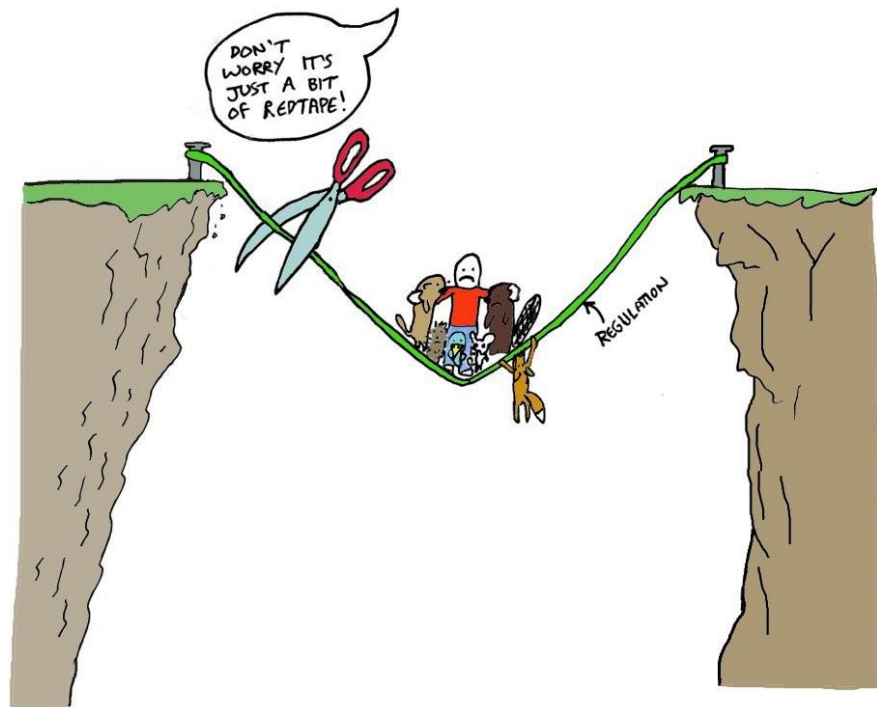




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Regulation protects the things we care about -  
we need to keep it that way

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## **‘Better regulation’ – better for whom?**

*Better Regulation, through its emphasis on co- and self-regulation and on burden reduction, undermines progress in the EU and may present an obstacle to the fulfilment of the Sustainable Development Goals (SDGs). Europe urgently needs to take action in order to ensure a sustainable future for people and the planet, and the EU’s commitment to the Paris climate Agreement and to the the implementation of the SDGs go part of the way towards acknowledging this. However, any progress may be undermined by the ‘Better Regulation Agenda’ which risks putting short-term economic interests before public interests, becoming a significant obstacle to a more sustainable future.*

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### Introduction

The European Union has been a vocal advocate of the need to address climate change. It has committed to international agreements including the Sustainable Development Goals and the 2015 Paris Agreement. However, in practice, its policy choices are not always in line with these political commitments. The European Commission has been marred by the Volkswagen emissions or '*Dieseltgate*' scandal that erupted in 2015. Rather than being a one-off case of malpractice, this scandal was a symptom of a wider drive towards de-regulation at the level of the EU.

### What is 'better regulation'?

In May 2015, under pressure from a number of Member States including the UK, which had long been lobbying for deregulatory mechanisms at the EU level including 'one-in-one-out' and the 'Red Tape Challenge'<sup>1</sup>, the European Commission published its latest guidelines on the so-called 'Better Regulation Agenda'. 'Better regulation', according to the Commission, is intended to 'improve the quality of new laws [...] so that EU policies achieve their objectives in the most effective and efficient way.' However, the Commission's interpretation of 'improving the quality of new laws' involves focusing on reducing what is vaguely referred to as the 'burden' to business caused by EU laws. And 'burden' doesn't just refer to the cost caused by excessive administrative complications associated with legislation, which has been come to be known as the *administrative burden*; it refers to the total economic cost of complying with a piece of legislation, including enforcement, which is referred to as '*regulatory burden*'.

The looseness with which the word 'burden' is used is therefore highly problematic. With no clear definition, it was unsurprising that when businesses were asked which EU laws they found most 'burdensome' in a 2012 public consultation on the 'Top 10 most burdensome legislative acts for SMEs', the worrying overall results were that seven of the top ten laws considered most 'burdensome' were important public interest laws, as businesses highlighted the perceived burden of complying with legislation dealing with waste, chemicals, air quality, product safety and food safety legislation, and laws relating to health and safety at work.

In addition to the focus on burden reduction, the Commission's so-called 'Better Regulation' agenda has four identifiable pillars<sup>2</sup>. The first of these is the widespread use of impact

<sup>1</sup> [http://b.3cdn.net/nefoundation/9c5f5f6281c949ddd9\\_uom6bvj9y.pdf](http://b.3cdn.net/nefoundation/9c5f5f6281c949ddd9_uom6bvj9y.pdf)

<sup>2</sup> Smith et al., Corporate Coalitions and Policy Making in the EU, Journal of Health Politics, Policy and Law, 2015, as referenced in [http://www.foeeurope.org/sites/default/files/corporate\\_capture/2017/foee-ceo-driving-into-disaster-feb2017.pdf](http://www.foeeurope.org/sites/default/files/corporate_capture/2017/foee-ceo-driving-into-disaster-feb2017.pdf)

assessments which, under the guise of evidence-based policy making, attempt to quantify social and environmental benefits (which are notoriously difficult to quantify) and measure these against the economic costs of implementing legislation. Cutting costs or 'burdens' for business are often prioritised over social or environmental benefits of legislation. The second pillar is constituted by the movement away from regulation and towards co- and self-regulation, consisting in voluntary agreements and a focus on market-driven solutions - solutions which, as has been shown by research carried out by the Royal Society for the Protection of Birds, have been largely ineffective<sup>3</sup>. The third pillar is the increase in stakeholder consultations, which give business increased opportunities to influence policy making at various stages of the legislative process. The fourth pillar is what is known as REFIT - the Commission's Regulatory Fitness and Performance programme. REFIT, by the Commission's own description, 'aims to cut red tape, remove regulatory burdens, [and] simplify and improve the design and quality of legislation'. It is the process by which the Commission scans its body of existing legislation with a clear focus on 'burden reduction', initiating processes by which legislation can be repealed or simplified with the aim of reducing costs for business.

In these ways, even if maybe not intended as such, the Commission's Better Regulation Agenda paves the way for business-friendly deregulation, which has the potential both to stop, weaken or slow down new, ambitious environmental, social and public interest legislation being passed, and to weaken existing essential laws protecting our environment, as well as social and labour rights.

### The 'dieseltgate' scandal

In 2014, US regulators exposed German car maker Volkswagen for tampering with test results. This led to a global scandal when it was discovered that Volkswagen had applied the same techniques all around the globe. In Europe, governments and EU institutions knew that there was a gap between emissions measures in labs and on the road. However, they did not act on it out of a concern not to burden the industry as it could hinder competitiveness.

This rationale corresponds to the so called 'Better Regulation' agenda, aiming at 'cutting red tape' in order not to burden industry with unnecessary rules. However, it has been proven time and time again what is disparagingly referred to as 'red tape' is actually Europe's safety net, protecting people and the planet. Moreover, the way Better Regulation is used is in fact institutionalising lobbying, giving industry an entry point at each step of the decision-making process of the EU.

The car industry was on board with the deregulatory principles of Better Regulation from the very beginning. In 2005 the Commission formed an advisory group, CARS 21, which had a sub-group with the aim to "scrutinise the regulatory framework and to identify possibilities for withdrawing or simplifying the legislation in force".

ACEA, the European Automobile Manufacturers' Association, was a member of CARS 21 and their president, Volkswagen's Bernd Pischetsrieder, was a leading figure in it. This group included industry representatives as well as government ministers from big car manufacturing nations, including France, the UK, Germany, Italy and the Czech Republic. Under CARS 21, ACEA pushed for the application of 'Better Regulation' principles to CO2 emission reductions and legislation on emission standards, paving the way for the scandal. Under pressure from

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<sup>3</sup> [https://www.rspb.org.uk/Images/usingregulation\\_tcm9-408677.pdf](https://www.rspb.org.uk/Images/usingregulation_tcm9-408677.pdf)

the car lobby, self-testing and virtual testing replaced national testing systems, eventually leading to the Dieselgate scandal.

The EU institutions gave the car industry a seat at the table which allowed them to set the agenda which led to 'simplification' and therefore watered-down rules protecting people and the environment.<sup>4</sup>

However, EU institutions are not the only ones at fault in this case. In addition to being members of the CARS 21 advisory group that pushed for co- and self-regulation, several Member States played an important role in the absence of sanctions against Volkswagen. The Commission has even taken legal action against Czech Republic, Germany, Greece, Lithuania, Luxembourg, Spain and the United Kingdom for failing to put into effect and enforce measures on car emissions<sup>5</sup>, particularly in the form of penalties imposed on car manufacturer as were put in place in the US. These States, home to big car manufacturers and some of whom were part of the CARS21 advisory group, have contested this action by the Commission and the process is ongoing.<sup>6</sup>

### **Better regulation and the no-longer-so-Circular Economy Package**

Another striking example of how Better Regulation is watering down legislation that is beneficial for people and the planet is what happened to the Circular Economy Package.

First introduced in 2014 by the Commission, the Circular Economy Package aimed at introducing sustainability and better use and management of the Earth's scarce resources. However, with the Juncker Commission, 'Better Regulation' became more prominent and in 2015, Frans Timmermans, Vice-President of the European Commission in charge of Better Regulation among other topics, announced the withdrawal of the Circular Economy Package. This decision was made despite consensus among the European Parliament, Council of Environment Ministers and civil society that this legislation was an improvement. Months later, a new version of the Circular Economy Package was proposed, transformed from a proposal having, primarily, a sustainability approach into a proposal focusing on short term and economic considerations. This shift in direction mirrored the vocal requests of the business lobby. In addition, after being retabled, the legislation was significantly weakened, reducing targets and changing mandatory measures into voluntary tools.

The European Commission, under the Better Regulation headline, weakened a piece of legislation that would have ensured more protection for people and the planet. It yielded to the pressure of the business lobby and only saw the issue as a matter of burdensome 'red tape' that needed to be cut.<sup>7</sup>

In 2016, the Commission decided to put the Birds and Habitats Directives (collectively known as the *Nature Directives*) through the REFIT process, as it deemed them inefficient. However, these laws were not at fault for the inefficiency as mentioned by the European Commission;

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<sup>4</sup> [http://fooeurope.org/sites/default/files/corporate\\_capture/2017/foee-ceo-driving-into-disaster-feb2017.pdf](http://fooeurope.org/sites/default/files/corporate_capture/2017/foee-ceo-driving-into-disaster-feb2017.pdf)

<sup>5</sup> [http://europa.eu/rapid/press-release\\_IP-16-4214\\_en.htm](http://europa.eu/rapid/press-release_IP-16-4214_en.htm)

<sup>6</sup> <http://www.reuters.com/article/us-volkswagen-emissions-eu-idUSKBN13X14N>

<sup>7</sup> [http://fooeurope.org/sites/default/files/resource\\_use/2016/how-better-regulation-sabotaged-circular-economy-package.pdf](http://fooeurope.org/sites/default/files/resource_use/2016/how-better-regulation-sabotaged-circular-economy-package.pdf)



rather, it was the inconsistent implementation, leading to incoherent policies in the Member States that was the culprit.

After two years of campaigning, Friends of the Earth Europe and other allies throughout Europe managed to convince the Commission that the legislation was not at fault and that changing it would not solve the implementation problem. Focusing solely on Better Regulation, understood and used by some as simplification and deregulation at all costs, prevents the EU from seeing where the issues might actually lie.<sup>8</sup>

## Conclusion

Europe urgently needs to take action in order to ensure a sustainable future for people and the planet. By committing to action on climate change under the Paris Agreement and to the implementation of the Sustainable Development Goals, the EU has gone part of the way towards acknowledging this. However, any progress may be sharply undermined by the 'Better Regulation Agenda' which risks putting short-term economic interests before public interests, becoming a significant obstacle to a more sustainable future.

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<sup>8</sup>[http://foeeurope.org/sites/default/files/biodiversity/2016/nature\\_is\\_our\\_right\\_policies\\_to\\_protect\\_nature\\_in\\_europe\\_for\\_the\\_good\\_of\\_everyone.pdf](http://foeeurope.org/sites/default/files/biodiversity/2016/nature_is_our_right_policies_to_protect_nature_in_europe_for_the_good_of_everyone.pdf)



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## Friends of the Earth Europe

### Member Groups

Austria	Global 2000
Belgium (Wallonia & Brussels)	Les Amis de la Terre
Belgium (Flanders & Brussels)	Friends of the Earth
Bosnia & Herzegovina	Centar za životnu sredinu
Bulgaria	Za Zemiata
Croatia	Zelena Akcija
Cyprus	Friends of the Earth
Czech Republic	Hnutí Duha
Denmark	NOAH
England, Wales & Northern Ireland	Friends of the Earth
Estonia	Eesti Roheline Liikumine
Finland	Maan Ystävät Ry
France	Les Amis de la Terre
Georgia	Sakharvelos Mtsvaneta Modzraoba
Germany	Bund für Umwelt und Naturschutz Deutschland (BUND)
Hungary	Magyar Természetvédők Szövetsége
Ireland	Friends of the Earth
Latvia	Latvijas Zemes Draugi
Lithuania	Lietuvos Zaliuju Judėjimas
Luxembourg	Mouvement Ecologique
Macedonia	Dvizhenje na Ekologistite na Makedonija
Malta	Friends of the Earth Malta
The Netherlands	Milieudefensie
Norway	Norges Naturvernforbund
Poland	Polski Klub Ekologiczny
Russia	Russian Social Ecological Union
Scotland	Friends of the Earth Scotland
Slovakia	Priatelja Zeme
Slovenia	Focus
Spain	Amigos de la Tierra
Sweden	Jordens Vänner
Switzerland	Pro Natura
Ukraine	Zelenyi Svit

**Friends of the Earth Europe** campaigns for sustainable and just societies and for the protection of the environment, unites more than 30 national organisations with thousands of local groups and is part of the world's largest grassroots environmental network, Friends of the Earth International.