



Brussels, 15.4.2019
SWD(2019) 156 final

COMMISSION STAFF WORKING DOCUMENT

Taking Stock of the Commission's Better Regulation Agenda

Accompanying the document

**COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN
PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL
COMMITTEE AND THE COMMITTEE OF THE REGIONS**

Better regulation: taking stock and sustaining our commitment

{COM(2019) 178 final}

Table of Contents

SECTION I BETTER REGULATION AND THE NEED TO TAKE STOCK.....	3
1. Introduction	3
2. The May 2015 Better Regulation Package	4
SECTION II WHAT HAVE WE LEARNED?.....	7
3. Opening up policymaking	7
3.1. Feedback opportunities.....	7
3.2. Consultation.....	12
3.3. Contributing to law-making (the ‘Have Your Say’ portal)	14
3.4. Overall assessment and key drivers.....	14
4. Better tools for better policies	17
4.1. Impact assessment	17
4.2. Evaluation.....	22
4.3. Regulatory Scrutiny Board	26
4.4. Subsidiarity and proportionality	30
5. Keeping the existing stock of legislation fit for purpose.....	32
5.1. The REFIT programme	32
5.2. REFIT Platform	33
5.3. Communicating REFIT activities.....	38
5.4. Considering alternative approaches to simplification and burden reduction	38
5.5. Results of simplification efforts	40
6. Better regulation as a shared agenda	42
6.1. Joint Declaration on the EUs legislative priorities	42
6.2. Delegated acts.....	43
6.3. Impact assessment	43
6.4. ‘Gold-plating’ of national transposing legislation.....	44
6.5. Other issues	44
7. Conclusions	45
ANNEX I BETTER REGULATION IN THE EUROPEAN COMMISSION.....	47
1. The origins of better regulation	47
2. The different elements of better regulation	47
ANNEX II OVERVIEW OF CONSULTATION ACTIVITIES	55
1. Overview of consultation activities	55
2. OECD regulatory Policy Outlook 2018	56

3.	Literature Review	57
4.	Public consultation	58
4.1.	General questions: The Commission and better regulation.....	59
4.2.	Public consultations: Consulting the public and interested parties	65
4.3.	Evaluations and REFIT: Evaluating existing EU laws.....	69
4.4.	Impact assessments: Assessing new Commission proposals	72
4.5.	Regulatory scrutiny: Scrutinising the quality of impact assessments and evaluations.....	74
4.6.	Final questions on past and future progress	75
4.7.	Conclusions of the public consultation questionnaire	77
4.8.	Position papers.....	77
5.	EU Institutions and consultative bodies	81
5.1.	The European Parliament	81
5.2.	The General Secretariat of the Council	83
5.3.	The Council Working Group on Competitiveness and Growth	85
5.4.	The Committee of the Regions.....	85
5.5.	The European Economic and Social Committee.....	87
6.	European Commission Officials.....	89
6.1.	Impact assessment	89
6.2.	Evaluation.....	89
6.3.	Consultation.....	90
6.4.	The Regulatory Scrutiny Board.....	90
6.5.	The REFIT programme, Platform and Scoreboard	90
7.	Other organisations and bodies	90
7.1.	REFIT Platform	90
7.2.	Task force on subsidiarity, proportionality and doing less more efficiently.....	92
7.3.	Regulatory Scrutiny Board	92

Section I

Better regulation and the need to take stock

1. INTRODUCTION

The Juncker Commission came into office with a commitment to do different things and to do them differently¹. It wanted to focus on delivering the initiatives needed to support its 10 political priorities and address the issues that really matter to people in the EU². Under its Union for democratic change, it put better regulation principles at the heart of its policymaking processes and made them a key part of the efforts to improve the legitimacy of EU action. The Commission modified its internal structure and created the post of First Vice President in charge of Better Regulation. It changed its internal working methods and transformed its planning processes to deliver streamlined work programmes. Building on the origins of better regulation in improving European governance³, this Commission wanted to strengthen the better regulation tools⁴ it inherited to inform timely and sound policy decisions that would deliver better policies for better results.

To this end, in 2015⁵, the Commission adopted a wide-ranging set of measures. Since then it has regularly reported the results it has achieved and the further improvements it has introduced⁶. The Commission has now taken stock of how well the various better regulation tools and processes are functioning. Its aim is to highlight what is needed for possible further improvements and to support a public debate on the future of better regulation.

This staff working document presents the findings of this exercise. It accompanies a Commission Communication discussing key results and mapping out avenues for possible future improvements.

The stocktaking exercise has focused on the period since May 2015 and relied upon a mixture of evidence. We have used external assessments (from the OECD⁷ and the European Court of Auditors⁸), reports from the Regulatory Scrutiny Board and a broad range of consultation activities. These include:

¹ COM(2014)910 final of 16 December 2014: ‘*Commission Work Programme 2015 – A New Start*’.

² https://ec.europa.eu/commission/priorities_en

³ COM(2001)428 of 27 July 2001: ‘*European Governance – A White Paper*’.

⁴ See Annex I for an overview of better regulation in the Commission including its origins.

⁵ COM(2015)215 final of 19 May 2015: ‘*Better regulation for better results – An EU agenda*’.

⁶ The European Union’s efforts to simplify legislation 2018, annual burden survey https://ec.europa.eu/info/sites/info/files/2018-annual-burden-survey_en.pdf COM(2017)651 final of 24 October 2017: ‘*Completing the better regulation agenda – better solutions for better results*’; and COM(2016)615 final of 14 September 2016: ‘*Delivering better results for a stronger Union*’.

⁷ <http://www.oecd.org/governance/oecd-regulatory-policy-outlook-2018-9789264303072-en.htm>

⁸ Special report 16/2018 Ex-post review of EU legislation: a well-established system, but incomplete <https://www.eca.europa.eu/en/Pages/DocItem.aspx?did=46063>

- interviews and meetings to consult Commission staff working in a range of different departments and functions, including better regulation support staff, senior managers and members of Commissioners’ political teams,
- a public consultation of all external stakeholders⁹,
- targeted consultation meetings with the administrative secretariats of the European Parliament, the Council of the European Union, the Committee of the Regions and the European Economic and Social Committee,
- an opinion from the REFIT Platform¹⁰,
- discussion in the Competitiveness and Growth Working Party of the Council (better regulation).

The Joint Research Centre has also published a review of the peer-reviewed and ‘grey’ literature written since 2015 in support of the current stocktaking exercise¹¹.

2. THE MAY 2015 BETTER REGULATION PACKAGE

In May 2015, the Commission published an extensive package of new measures to improve and strengthen its better regulation policy in four areas where progress was considered necessary:

- (1) ***Opening up policymaking.*** To make the EU more transparent and accountable but also to ensure that policies are based on the best available evidence¹², the Commission took measures to consult more, listen better and better explain what it does and why. These measures include:
 - creating feedback opportunities over the entire lifecycle of a policy from its initiation to its evaluation, including for the first time the possibility to give views on draft texts of delegated and implementing acts.
 - committing to systematic 12-week public consultations on new proposals and evaluations. This was later complemented by a commitment to translate public consultation questionnaires into all official languages for priority initiatives in Annex I of the Commission work programme and into English, French and German for all others.
 - introducing an improved template for the explanatory memorandum accompanying Commission proposals. This provides improved

⁹ See Annex II, Overview of consultation activities.

¹⁰ REFIT Platform opinion XXII.10.a “REFIT Platform Survey – Future prospects”, adopted on 14 March 2019: https://ec.europa.eu/info/files/refit-platform-recommendations-horizontal-issues-xxii10a-refit-platform-survey-future-prospects_en

¹¹ Listorti G., Basyte Ferrari E., Acs S., Munda G., Rosenbaum E., Paruolo P., Smits P. (2019). *The debate on the EU Better Regulation Agenda: a literature review*, EUR, Publications Office of the European Union, Luxembourg, 2019, ISBN 978-92-76-00840-8, doi:10. 2760/46617, JRC116035

¹² This document focusses exclusively on the measures taken under Better Regulation policy. Other measures were also taken to improve the availability of evidence for policy making including the establishment of the European Commission’s Group of Chief Scientific Advisors.

explanations of how better regulation principles are applied in the preparation of an initiative, and if not, why they are not¹³.

- designing a new, central web-based portal in several stages (*‘Have Your Say’*) to facilitate stakeholders’ participation in policymaking¹⁴.
- (2) ***Utilising better tools for better policies.*** To inform political choices in a balanced and inclusive way, drawing lessons from the past and identifying the best and least costly policy solution, the Commission took measures such as:
- integrating and improving guidelines (and supporting tools)¹⁵ on how to apply better regulation in practice. These guidelines address all aspects of the policy cycle and the connections between them.
 - to substitute the Impact Assessment Board with a new body to scrutinise the quality of impact assessments like its predecessor and, for the first time, evaluations. To safeguard its autonomy, this Regulatory Scrutiny Board (the Board) consists of seven full-time members who are independent of the policymaking process, including three appointed from outside of the EU institutions¹⁶.
 - committing to explain publicly the reasons why the Commission may decide to take action even if the Board does not give a positive assessment of the quality of any accompanying impact assessment.
- (3) ***Keeping the existing stock of legislation fit for purpose.*** Even well designed legislation may become out of date, turn out to be more burdensome and less effective than originally thought or simply cease to achieve relevant objectives. For these reasons, managing existing EU legislation is as important as responding to new policy challenges, and the Commission therefore decided to:
- commit to evaluate existing legislation before proposing changes (*‘evaluate first’* principle);
 - strengthen and eventually mainstream its REFIT programme to verify the opportunities to deliver results more efficiently whenever existing EU legislation is revised;
 - establish a new REFIT Platform¹⁷ through which stakeholders can point the Commission to existing policies and legislation that could be simplified.

¹³ C(2015)3264: *Standard explanatory memorandum*: <http://ec.europa.eu/transparency/regdoc/?fuseaction=list&coteId=3&year=2015&number=3264&version=ALL&language=en>

¹⁴ https://ec.europa.eu/info/law/better-regulation/have-your-say_en

¹⁵ https://ec.europa.eu/info/better-regulation-guidelines-and-toolbox_en

¹⁶ C(2015) 3263: Decision of the President of the Commission on the establishment of an independent Regulatory Scrutiny Board: https://ec.europa.eu/info/sites/info/files/decision-on-the-established-of-an-independent-regulatory-scrutiny-board_may2015_en.pdf

¹⁷ C(2015) 3261: Commission decision establishing the REFIT Platform: https://ec.europa.eu/info/files/commission-decision-c2015-3261-establishing-refit-platform-0_en

- (4) *Advancing a common agenda with other EU institutions and Member States.* The Commission has a key role in better regulation but cannot do it alone. The right to amend legislative proposals lies with the European Parliament and Council and the right to transpose and implement adopted legislation lies with Member States. That is why the Commission put forward a proposal for a new interinstitutional agreement on better law-making between the European Parliament, the Council of the European Union and the European Commission¹⁸. Following negotiations, a new agreement¹⁹ was jointly approved in April 2016.

The next section takes stock of the evidence and examines the views of the concerned parties on the results of these measures.

¹⁸ COM(2015) 216: *Proposal for an interinstitutional agreement on better regulation*: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52015DC0216>

¹⁹ Interinstitutional agreement between the European Parliament, the Council of the European Union and the European Union and the European Commission on better law making of 13 April 2016 [https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32016Q0512\(01\)&from=EN](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32016Q0512(01)&from=EN)

Section II

What have we learned?

Activities completed

The Commission has applied its better regulation policy to its policymaking activities. The table below gives a general overview for 1 January 2015 to 31 December 2018:

Table 1 Better regulation activities 2015-2018.

<i>Numbers of:</i>	2015	2016	2017	2018
Public consultations	105	120	112	80
Percentage of public consultations in all official languages	26%	21%	55%	71%
Impact assessments	29	60	53	76
Evaluations*	53	65	74	67

* *Evaluations cover regulatory instruments, expenditure measures, and communication and coordination activities. The main overarching evaluations are included but not the underlying thematic or geographic evaluations.*

3. OPENING UP POLICYMAKING

Answers to the public consultation identified stakeholder consultations and transparency as the two areas where most progress has been achieved since 2014²⁰. This is also reflected in an OECD comparative assessment of its member countries' better regulation systems which, in 2018, ranked the Commission as first in the OECD for stakeholder engagement²¹. At the same time, however, respondents to the public consultations flagged transparency and consultation as the two areas most in need of improvements in the future²².

These general findings confirm the continued validity of the Commission's choice to focus on opening up policymaking and are reassuring in terms of the success achieved. They do, however, indicate the need to reflect further on what the key shortcomings are and how they can be tackled in a proportionate manner. The following analyses in greater detail outcomes and contributing factors, offering background evidence for future policy decisions.

3.1. Feedback opportunities

Opportunities to give feedback over the entire lifecycle of a policy from its initiation to its evaluation were gradually introduced. Already in 2015, feedback on inception impact assessments, evaluation roadmaps and other types of roadmaps was made available. In 2016 for the first time it became possible to provide views on draft texts of delegated and implementing acts and in 2017 on Commission proposals.

Table 2 Roadmaps and inception impact assessments posted for feedback, 2015-2018.

²⁰ Question 15 of the public questionnaire.

²¹ <http://www.oecd.org/governance/oecd-regulatory-policy-outlook-2018-9789264303072-en.htm>

²² Question 16 of the public questionnaire.

<i>Numbers</i>	<i>2015</i>	<i>2016</i>	<i>2017</i>	<i>2018</i>
Roadmaps	76	57	77	51
Inception impact assessments	30	59	65	21
Evaluation roadmaps	71	88	33	63
Commission proposals	-*	-*	78	154

* Commission proposals were made available for feedback as from 2017

The results of the public consultation show that around a fifth of respondents are not aware of the opportunities the Commission offers to contribute to policymaking²³. Since those answering the public consultation can be expected to be more knowledgeable about better regulation than the average stakeholder at large, this indicates a clear scope to further improve the knowledge and reach of EU tools.

The satisfaction of those aware of the various opportunities varied, with the majority of respondents always being either satisfied or neutral. Slightly over a fifth of the respondents, however, expressed dissatisfaction with all tools.

Roadmaps and inception impact assessments

At the start of each new initiative the Commission publishes an inception impact assessment or, when no impact assessment is planned, a roadmap²⁴. At the start of each evaluation the Commission publishes an evaluation roadmap. These documents provide basic information about what the Commission intends to do, the analytical work it will undertake, and the consultation activities it will launch and, in the case of roadmaps, the reasons why no impact assessment is planned. For a period of 4 weeks, the public can provide comments on these documents, including the need for an impact assessment. The lead Commission department takes into account these comments when preparing the initiative.

- In the two-year period up until 31 December 2018, 86 inception impact assessments were posted to the web for stakeholder feedback. These attracted 1 253 feedback contributions (32 inception impact assessments received 0-5 contributions, with 2 inception impact assessments receiving more than 100 contributions). The highest number of responses were received for the fight against illegal content online (146) and construction products (121). Business groups²⁵ accounted for approximately 59%, NGOs for 15%, EU citizens for 8% and public authorities for 5%. The most responses came from Belgium (24%), followed by Germany (16%), the UK (8%) and France (8%).
- In the two-year period up until 31 December 2018, 128 roadmaps were posted to the web for stakeholder feedback. These attracted 2 272 feedback contributions 79

²³ Questions 7 and 8 of the public consultation.

²⁴ In 2015 and 2016 roadmaps and inception impact assessments were posted to http://ec.europa.eu/smart-regulation/roadmaps/index_en.htm. They were posted to the 'Have Your Say' web site for the first time in 2017. This allowed central collection of feedback and its statistical analysis.

²⁵ 'Business group' covers company/business organisations and business associations.

roadmaps received 0-5 contributions, with 4 roadmaps receiving more than 100 contributions). Business groups accounted for approximately 20%, NGOs for 13%, EU citizens for 52% and public authorities for 3%. The most responses came from Spain (25%), followed by Belgium (15%), Italy (15%) and France (7%).

- In the two-year period up until 31 December 2018, 96 evaluation roadmaps were posted to the web for stakeholder feedback. These attracted 724 feedback contributions (63 roadmaps received 0-5 contributions, and none more than 100 contributions). Business groups accounted for approximately 44%, NGOs for 20%, EU citizens for 12% and public authorities for 7%. The most responses came from Belgium (33%), followed by Germany (14%), France (7%) and Spain (6%).

Responses from the public consultation indicate that roadmaps and inception impact assessments are generally considered useful to prepare participation in policymaking and as tools to provide initial feedback²⁶. This is especially true among professionals. Professionals are also the group that provided most of the feedback to inception impact assessments and evaluation roadmaps. According to the REFIT Platform, feedback may be limited due to a lack of time²⁷. In its responses to the stocktaking consultation, the business community welcomed the opportunities to provide feedback on roadmaps and inception impact assessments.

Delegated acts and implementing acts

In many acts of Union law, the European Parliament and the Council empower the Commission to introduce or replace technical and specific elements needed to implement legislation or to ensure a consistent implementation by all Member States. The Commission has greatly enhanced transparency around the preparation of these acts of general application, known as delegated and implementing acts, allowing the public to comment on the draft legal text for a period of 4 weeks²⁸. These comments are taken into account before the Commission adopts a delegated act and before it presents a draft implementing act to the relevant committee for its opinion.

Between 1 July 2016 and 31 December 2018²⁹, the Commission published 151 draft delegated acts, 191 draft implementing acts and 94 draft acts, following the regulatory procedure with scrutiny³⁰.

Table 3 Delegated acts and implementing acts posted for feedback, 2015-2018.

²⁶ Questions 7 and 8 of the public consultation.

²⁷ REFIT Platform Opinion on submissions XXII.4.a by the DIHK and XXII.4.b by a citizen on Stakeholder consultation mechanisms, 07.06.2017, https://ec.europa.eu/info/sites/info/files/xxii4ab_on_stakeholder_consultation_mechanisms.pdf

²⁸ Since the middle of 2016, these draft acts have been posted to the 'Have Your Say' portal.

²⁹ Not all draft acts are published, as certain well-defined exceptions apply. For example, acts of individual application, in cases of urgency or where scientific advice is followed without any deviation, are not posted. See: Better regulation toolbox, tool #56 on delegated acts and implementing acts, point 4.4 https://ec.europa.eu/info/sites/info/files/file_import/better-regulation-toolbox-56_en_0.pdf

³⁰ A comitology procedure that pre-dates the entry into force of the Lisbon Treaty and which is now being replaced by empowerments according to Articles 290 and 291 of the Treaty on the Functioning of the European Union (TFEU).

<i>Numbers</i>	<i>2015</i>	<i>2016</i>	<i>2017</i>	<i>2018</i>
Delegated acts	-	24	61	66
Implementing acts	-	42	73	76
Acts following regulatory procedure with scrutiny	-	32	31	31

Between 2016 and 31 December 2018, the 151 delegated acts posted to the web for stakeholder feedback attracted 1 576 feedback contributions (100 delegated acts received 0-5 contributions, with 2 acts receiving more than 100 contributions). Business groups accounted for approximately 54%, NGOs for 11%, EU citizens for 20% and public authorities for 5%. The most responses came from Germany (20%), followed by Belgium (17.8%), the UK (11.8%) and France (9%).

In the same period, the 191 implementing acts posted to the web for stakeholder feedback 1 770 feedback contributions (149 implementing acts received 0-5 contributions, with 4 acts receiving more than 100 contribution). Business groups accounted for approximately 54%, NGOs for 6%, EU citizens for 26% and public authorities for 6%. The most responses came from Belgium (13.1%), followed by the UK (13%), France (12.8%) and Italy (9%).

In the same period, the 94 acts following regulatory procedure with scrutiny posted to the web for stakeholder feedback received 1005 feedback contributions (50 consultation with 0-5 contributions, with 2 acts receiving more than 100 contributions). Business group accounted for approximately 59%, NGOs for 13%, EU citizen for 11% and public authorities for 3%, The most responses came from Belgium 25%, followed by Germany 19%, the UK 8%, and France 8%.

The low response rate to implementing and delegated acts, in particular from EU citizens, is likely to reflect limited awareness of the feedback mechanism but also the technical nature of the acts. This mechanism is mainly used by business groups. Similar to roadmaps and inception impact assessments, responses are generally low but may be more significant in a few cases of more general concern, such as the implementing act on drones or the one on the origin labelling on food.

Proposals

Prior to 2015, no formal transparent mechanism existed for the public to express its views about the legislative proposals presented to the European Parliament and the Council. The Commission introduced then a mechanism for stakeholders to comment on each proposal (and associated impact assessment) for a period of 8 weeks immediately following Commission adoption. The Commission reports this feedback to the European Parliament and the Council for them to consider during the legislative procedure.

- In the two-year period ending 31 December 2018, 232 Commission proposals were posted to the web for stakeholder feedback. These attracted 7 075 feedback contributions (152 proposals received 0-5 contributions). The proposal on a European defence fund alone attracted more than half of these contributions (4 071). All other proposals attracted on average 13 contributions. Of all the contributions, business groups accounted for approximately 42.9%, NGOs for 10.5%, EU citizens for 31.1%

and public authorities for 2.7%. The most responses came from Belgium (16.8%), followed by Italy (16.3%), France (12.1%), and Germany (11.6%).

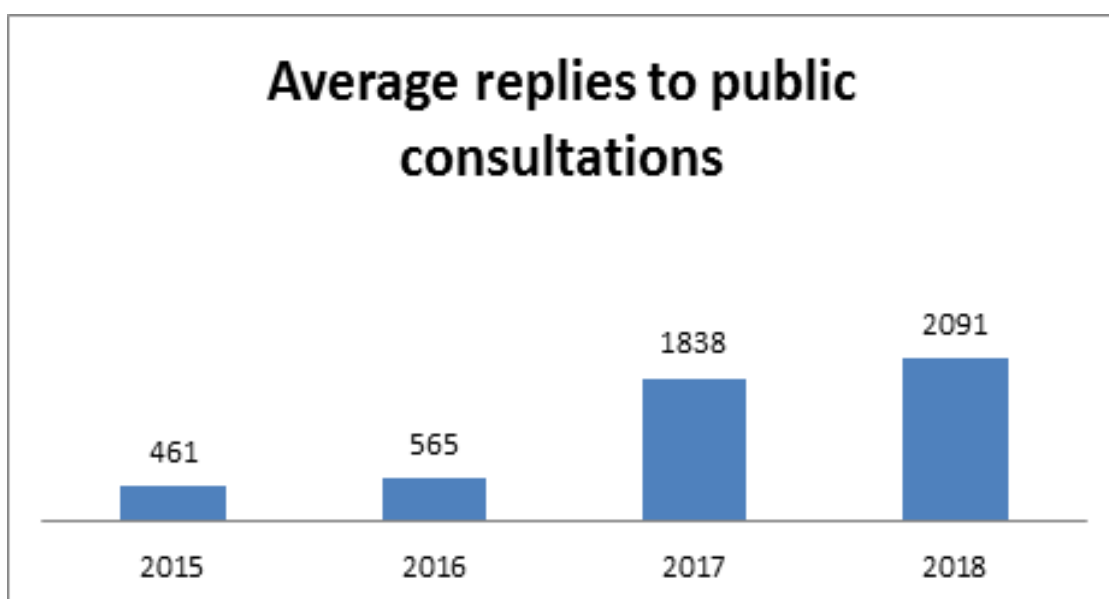
The limited feedback reflects the limited awareness of the feedback mechanism as well as possibly a limited interest in its use. However, in the case of proposals of a general public interest, such as marine litter³¹, drinking water³² or the defence fund³³, response rates were significantly higher.

The European Parliament has made clear that it would prefer the Commission to limit its consultations to before it adopts as it considers that, during the legislative process itself, it is for the Parliament and Member States to carry out their own consultations, if they choose to. A similar concern is also raised in the opinion of the REFIT Platform on stakeholder consultation³⁴. The mechanism also receives the relative highest share of negative replies in terms of satisfaction from the participants to the public consultation (nearly a third). This is probably due to the reduced interest in offering feedback on items the Commission has already adopted. Nevertheless, practical experience shows that, at times, the mechanism can generate a high number of replies, which could be of particular value in cases where no impact assessment and/or no public consultation could be carried out for reasons of urgency.

3.2. Consultation

The Commission is obliged to consult widely before making legislative proposals. These consultations should consider local and regional dimensions, as appropriate³⁵. Consultation of the public and civil society is part of a wider agenda to improve the democratic legitimacy and ownership of what the Union does that dates back to the 2001 White Paper on European Governance³⁶. This was given a new boost under the Juncker Commission. In May 2015, the Commission introduced the requirement to conduct a 12-week public consultation to support all impact assessments and evaluations. For each new policy initiative, the Commission develops a consultation strategy that maps out the different consultation activities that the Commission will undertake. These will generally include a public consultation and a range of activities targeting particular stakeholders

Box 1: Average replies to public consultations*



* *excludes consultations that received significantly higher responses in a given year and considered as outliers: the 2015 consultation on the evaluation of the Birds and Habitat Directive (552 472), the 2017 consultation on the common agricultural policy (322 912) and the 2018 consultation on summertime arrangement (4 706 294).*

and information.

According to the responses to the public consultation, the best known and the most valued way to contribute to policymaking is through public consultations³⁷. The Commission carried out 417 public consultations between 2015 and 2018, of which 303 to support new policy initiatives and 114 to support evaluations. The number of responses varies markedly depending on the nature of the topic addressed. There was a very large number of responses for topics of high popular interest for specific Member States or stakeholder groups. This was, for instance, the case for the consultation on summertime arrangements³⁸ which attracted some 4.6 million responses (of which 70% from one Member State alone) and the consultation on the evaluation of the Birds and Habitat Directive³⁹ which triggered more than half a million responses. The consultation on the future of the common agricultural policy⁴⁰ reached more than 300 000 replies in 2017 (compared to 5 700 in 2010⁴¹). In contrast, zero or very limited responses were registered for some very technical cases like the code of conduct for computerised reservation systems, or zinc oxide in cosmetics. Not taking into account the exceptional cases of the consultations on the summertime arrangements, birds and habitats and the future common agricultural policy, the average number of responses to a public consultation between 2015 and 2018 was around 1 119. A sample analysis suggests that in the case of public consultations supporting evaluations, response levels are relatively lower (on average 455 responses for evaluations⁴² vs on average 1 643 responses for new initiatives⁴³). For both types of consultations, the majority of contributions tend to come from Germany, the UK, Spain and Italy. Local and regional authorities account for a small proportion of the answers.

The academic literature recognises that public consultation is a tool to promote participatory democracy⁴⁴. It promotes legitimacy, helps identify obstacles to effective implementation and avoids technocratic rulemaking. According to consultees, public

³⁷ Question 8 of the public consultation.

³⁸ COM(2018) 639 of 12 September 2018: Proposal for a Directive of the European Parliament and of the Council discontinuing seasonal changes of time and repealing Directive 2000/84/EC,

³⁹ COM(2016) 473 Commission Staff Working Document - Executive Summary of the Fitness Check of the EU Nature Legislation (Birds and Habitats Directives)

⁴⁰ COM(2018) 392 of 1 June 2018 Proposal for a Regulation of the European Parliament and of the Council establishing rules on support for strategic plans to be drawn up by Member States under the Common agricultural policy (CAP Strategic Plans) and financed by the European Agricultural Guarantee Fund (EAGF) and by the European Agricultural Fund for Rural Development (EAFRD) and repealing Regulation (EU) No 1305/2013 of the European Parliament and of the Council and Regulation (EU) No 1307/2013 of the European Parliament and of the Council

⁴¹ COM(2011) 625 of 18 October 2011 Proposal for a Council Regulation determining measures on fixing certain aids and refunds related to the common organisation of the markets in agricultural products

⁴² Does not include birds and habitats

⁴³ Does not include responses to summertime or common agricultural policy

⁴⁴ Dawson, M. (2016). Better regulation and the future of EU regulatory law and politics. *Common Market Law Review*, 53(5), 1209–1235. <https://doi.org/10.1017/S0165070X00028436>; Meads, R., & Allio, L. (2015). Paving the Way to an Improved, Modern Management of Risk: The new European Commission's Better Regulation Strategy. *European Journal of Risk Regulation*, 6(4), 649–651. <https://doi.org/10.1017/S1867299X00005213>

consultation is the area where the Commission has made considerable progress since 2015. The literature also recognises a clear increase in stakeholder involvement, with sufficient time to take into account contributions received from consultees⁴⁵. However, external stakeholders raised concerns about the high number of consultations launched by the Commission and the demands this puts on respondents and the fatigue it can cause. In addition, industrial stakeholders asked for more transparency when presenting consultation results. They would also like the views of representative organisations listed in the transparency register to be weighted more heavily.

3.3. Contributing to law-making (the ‘Have Your Say’ portal)

For easier and better interaction throughout the policy cycle with people and stakeholders, the Commission has progressively put in place a dedicated digital solution on the *Europa* website. Through this new web portal – known as ‘*Have your say*’ - the public can participate in all the feedback mechanisms and public consultations analysed above. It can also provide comments and suggestions to the REFIT Platform on how to simplify specific legislation and reduce unnecessary regulatory costs. In June 2018, the portal also began offering a timeline view for each ongoing or upcoming initiative. Since the portal’s launch in June 2016, the number of yearly visits to ‘*Have Your Say*’ has steadily increased, reaching almost 900 000 in 2018. A recent survey of 200 users also highlighted its user friendliness.

3.4. Overall assessment and key drivers

The analysis suggests there is widespread recognition of the efforts the Commission has made to open up policymaking and a fair degree of satisfaction with the existing set of tools. The key features of the overall system are considered world class by the OECD and there is no significant share of stakeholders calling for a radical overhaul. At the same time, there is a widespread view that the system is not delivering up to its potential in terms of participation and evidence collection. To highlight possible areas for future changes, the following analyses the underlying factors.

Outreach

There is limited awareness among stakeholders about the opportunities to participate in policymaking and consultation activities. This is reflected in the response levels to public consultations and feedback opportunities and was repeatedly pointed out by Commission staff who were interviewed.

⁴⁵ For example, Chase, P., & Schlosser, A. (2015). Better regulation - An ongoing journey. *European Journal of Risk Regulation*, 6(3), 378–379; Delogu, B. (2016). *Risk Analysis and Governance in EU Policy Making and Regulation. An Introductory Guide*. Springer International Publishing Switzerland; Eliantonio, M., & Spendzharova, A. (2017). The European Union’s New “Better Regulation” Agenda: Between Procedures and Politics. *European Journal of Law Reform*, 19(1–2), 3–15; Parker, R. W., & Alemanno, A. (2015). A Comparative Overview of EU and US Legislative and Regulatory Systems: Implications for Domestic Governance & the Transatlantic Trade and Investment Partnership. *Columbia Journal of European Law*, 22(1), 61–99; Radaelli, C. M. (2018). Halfway Through the Better Regulation Strategy of the Juncker Commission: What Does the Evidence Say? *JCMS: Journal of Common Market Studies*, 56, 85–95; Stoffel, N.-C. (2015). *Quo Vadis Impact Assessment? An Evaluation of the European Commission’s New Better Regulation Agenda* (Master Working Paper).

In the spring of 2017, in a major move to reach out to a wider public, the Commission introduced a new requirement to translate its questionnaires into all official languages⁴⁶ for its most important initiatives. Questionnaires for other initiatives would, as a minimum, be presented in English, French and German. All public consultations were available in at least two languages in 2018 and 71% were translated into all official languages (except Irish).

Consultees to the public consultation received all these developments positively⁴⁷. Responses from NGOs, in particular, indicated that multilingual questionnaires were necessary. Finally, while too early to determine, the growing volume of responses may be linked to this greater accessibility by having consultations available in more languages. However, such developments come with a significant cost in terms of the speed with which a policy initiative can be developed, since a questionnaire may take 2 to 3 weeks to translate. Data now becoming available following completion of phase three of the ‘*Have Your Say*’ web portal will make it possible to analyse the geographical distribution of responses in greater detail.

As for other possible ways of increasing awareness and outreach, Commission staff welcomed a greater involvement of local and national authorities, Member States, expert groups and Council working parties in gathering evidence more effectively about the different situations in the Member States and, where relevant, in the EU partner countries. Respondents suggested that awareness-raising campaigns should support individual consultations. This was echoed by Commission staff and in the academic literature. The literature review also highlighted a potential weakness, in that consultations currently seem to overly target those who already have access to the policymaking process⁴⁸.

Duration of public consultations

Stakeholders will answer only if they have sufficient time to do so. National authorities and local and regional authorities, in particular, have stressed the importance of having sufficient time to prepare comprehensive responses. It is for this reason that, in 2015, the Commission committed in principle to 12 weeks for consultations and 4 weeks for feedback. The twelve-week duration is appreciated by many respondents to the public

⁴⁶ The translation of public consultations into Irish should be assessed on a case-by-case basis until the capacity to translate into Irish has been fully built up.

⁴⁷ Question 9 of the public consultation.

⁴⁸ Alemanno, A. (2015). How Much Better is Better Regulation? *European Journal of Risk Regulation*, (3), 1–24; Dawson, M. (2016). Better regulation and the future of EU regulatory law and politics. *Common Market Law Review*, 53(5), 1209–1235; Eliantonio, M., & Spendzharova, A. (2017). The European Union’s New “Better Regulation” Agenda: Between Procedures and Politics. *European Journal of Law Reform*, 19(1–2), 3–15; Garben, S. (2018). An ‘Impact Assessment’ of EU Better Regulation. In S. Garben & I. Govaere (Eds.), *The EU Better Regulation Agenda: A Critical Assessment*. Bloomsbury Publishing; Pacht, U. (2015). Repercussions of the European Commission’s better regulation agenda on consumer interests and policy. *European Journal of Risk Regulation*, 6(3), 375–377; Sarpi, F. (2015). “Better Regulation”: Better for whom? *European Journal of Risk Regulation*, (April), 1–16.

consultation⁴⁹, although the literature review noted that this may be too short for replying to consultations on complex issues⁵⁰.

There is a need to consider the impact of any longer consultation period on the overall time it takes to prepare a policy proposal. Commission staff proved very sensitive to this issue and argued that public consultations (and the opportunity to provide feedback on roadmaps) may substantially delay the policymaking process within the Commission. Staff argued for a shorter response period of 8 to 10 weeks.

While in 2015 and 2016 over 90% of public consultations abided by the twelve-week consultation period, in 2018 this dropped to below 75%.

Consultation questionnaires

Although a relatively larger share of respondents to the public consultation were satisfied with the clarity and neutrality of the Commission's questionnaires, almost a third expressed some dissatisfaction. In particular, consultees argued that questionnaires should be shorter and drafted in a non-technical and non-biased manner. In its opinion, the REFIT Platform raised concerns about the format, clarity and content of consultations⁵¹. The literature review also noted that participants are often prevented from making comments outside of the multi-choice questions⁵². Since 2017, it is always possible to upload supporting material. A number of Commission staff indicated that they did not have the necessary expertise to draft good, understandable and effective questionnaires. They wanted more training and guidance.

Feedback to consultees

The impact assessment reports, the staff working documents accompanying evaluations or a self-standing synopsis report should present the results of all consultation activities undertaken. These should also be summarised in the explanatory memorandum accompanying a Commission proposal. The aim is to provide feedback on how the input from consultees has been used.

Nearly 40% of the respondents to the public consultation were (very) dissatisfied with the way the Commission reports on the result of its public consultations and feedback and what it does with this information. NGOs responding to the public consultation argued that it is often difficult to discern how the consultation process has affected policymaking. This is also supported by the literature review⁵³. More generally,

⁴⁹ Question 9 of the public consultation.

⁵⁰ Chase, P., & Schlosser, A. (2015). Better regulation - An ongoing journey. *European Journal of Risk Regulation*, 6(3), 378–379; Delogu, B. (2016). *Risk Analysis and Governance in EU Policy Making and Regulation. An Introductory Guide*. Springer International Publishing Switzerland;

⁵¹ REFIT Platform opinion on submissions XXII.4.a by the DIHK and XXII.4.b by a citizen on stakeholder consultation mechanisms, adopted 7.6.2017, https://ec.europa.eu/info/sites/info/files/xxii4ab_on_stakeholder_consultation_mechanisms.pdf

⁵² Impact Assessment Institute. (2017). *Final study A year and a half of the Better Regulation Agenda : what happened ?*; Ranchordas, S. (2017). *Consultations, Citizen Narratives and Evidence-Based Regulation: the Strange Case of the Consultation on the Collaborative Economy*, 1, 1–33.

⁵³ For example, Bartlett, O. (2018). *Reforming the Regulation on Spirit Drinks – an Example of Better Regulation?* *European Journal of Risk Regulation*, 9(2), 310–315; Maśnicki, J. (2016). *Good Governance through Better Regulation. Looking for the impact analysis approach to the proportionality principle*; Ranchordas, S. (2017). *Consultations, Citizen Narratives and Evidence-*

consultees to the public consultation argued that there is no clear commitment on how to use consultation results for policymaking. The REFIT Platform also asks in its opinion for more transparency in the feedback provided⁵⁴.

A wide range of consultees to the public consultation wanted systematic and timely reports presenting the results of consultation activities. They also wanted contributors to receive better individual feedback.

Staff Opinion

The quality, use and reporting of various consultation tools are influenced by the resources available and the expertise provided to the staff that works on them.

This is reflected in the results of Commission staff interviews. A number of staff who were interviewed thought that public consultation has a more limited role in gathering useful evidence, particularly for technically complex legislation. Targeted consultations were perceived to be much more useful. Some Commission staff expressed a desire for more flexibility particularly with the requirement to conduct public consultations for all evaluations and impact assessments. In their opinion, the necessity for public consultation should be assessed in the context of each new initiative. Similarly, a number of Commission staff found public consultations burdensome, time-consuming and resource-intensive processes. The results were often considered disappointing in terms of response rates, overall coverage of stakeholders and quality of responses.

4. BETTER TOOLS FOR BETTER POLICIES

4.1. Impact assessment

Consultees overwhelmingly support evidence-based policymaking. They also agree that the changes introduced in May 2015 have helped to consolidate the standing and culture of the impact assessment. The better regulation guidelines and toolbox represent a particular achievement because they provide a common framework for the policy cycle. This is reflected in the recent OECD comparative assessment⁵⁵: the Commission further refined and improved its impact assessment policy and maintained the third-placed ranking it had already achieved in 2014. Stakeholders' concerns generally relate to the application of these guidance documents.

The Regulatory Scrutiny Board observes that impact assessments are carried out for a wide variety of policy fields. For example, different types of initiatives require looking at different types of impacts, some more easily quantifiable than others. In their opinion, the Commission guidelines are sufficiently flexible to accommodate for this variety.

Based Regulation: the Strange Case of the Consultation on the Collaborative Economy, 1, 1–33; Willermain, F., & Cioriciu, A. (2015). The Better Regulation Package : Creating better regulations , but for what kind of EU politics? (39).

⁵⁴ REFIT Platform opinion on submissions XXII.4.a by the DIHK and XXII.4.b by a citizen on stakeholder consultation mechanisms, adopted 7.6.2017, https://ec.europa.eu/info/sites/info/files/xxii4ab_on_stakeholder_consultation_mechanisms.pdf

⁵⁵ <http://www.oecd.org/governance/oecd-regulatory-policy-outlook-2018-9789264303072-en.htm>

Against this overall positive assessment, the following analyses key concerns and attempts to assess their magnitude. It also analyses underlying factors with a view to making possible future improvements.

Which legislative proposals should be supported by an impact assessment?

The Commission is committed to presenting impact assessments for its initiatives that have significant impacts and particularly for those presented in its work programme⁵⁶. The European Parliament and the Council have also committed to examining the Commission's impact assessment at the outset of the legislative procedure.

The Commission has clear guidance on when an impact assessment should be prepared⁵⁷. Impact assessments are only prepared where they are useful for the decision to be taken by the Commission. An impact assessment will not usually be prepared if there is little choice over the content of the initiative or if the impacts are not significant⁵⁸.

There may be cases, however, where it is not possible or appropriate to follow each mandatory better regulation requirement (including carrying out an impact assessment where significant impacts can be expected)⁵⁹. There may be a political imperative to move ahead quickly, an emergency that requires a rapid response or a need to comply with specific deadlines in legislation which cannot be met on the basis of normal planning.

Any resulting exception must be centrally agreed within the Commission and brought to the attention of external stakeholders (via the roadmap, or the inception impact assessment and the explanatory memorandum). Alternative ways should observe as much as possible better regulation principles (like accompanying the proposal in question with a staff working document presenting the available evidence). External organisations such as the Impact Assessment Institute are continuously checking whether this occurs in practice⁶⁰.

The stocktaking has recorded a widespread concern by stakeholders about what these rules imply in terms of number of legislative proposals without impact assessments. The European Parliament has noted that approximately 30% of priority initiatives in the Joint

⁵⁶ Paragraph 13 of the interinstitutional agreement on better law-making.

⁵⁷ See tool #9 of the better regulation toolbox on when an impact assessment is necessary: https://ec.europa.eu/info/files/better-regulation-toolbox-9_en

⁵⁸ For example, proposals to codify several legislative acts do not require an impact assessment because there are no substantive changes to the underlying legislation and therefore no impacts. In addition, it may be possible to proceed directly from an evaluation of existing legislation to a legal proposal without an impact assessment when the evaluation identifies specific/well-defined issues and there is little choice about how to address them. For financial programmes, an impact assessment is not required and a simpler ex ante evaluation can be prepared instead.

⁵⁹ For example, a special regime applies to the Commission's proposals for a Council decision to implement social partners' agreements under Article 155 TFEU due to the role and autonomy entrusted by the Treaty to the social partners. In other cases, there may be a political imperative to move ahead quickly, an emergency that requires a rapid response, a need to adhere to specific deadlines in legislation which cannot be met on the basis of normal planning or a need to protect security-related or confidential information. <https://ec.europa.eu/info/sites/info/files/better-regulation-guidelines.pdf>

⁶⁰ <https://www.impactassessmentinstitute.org/news/jo5pj1k319/Absence-of-Impact-Assessment-often-not-justified-or-contrary-to-Better-Regulation>

Declaration signed by the three institutions do not have an impact assessment. Similarly, an analysis of all proposals linked to the Commission work programme Annex I and II between 2015 and 2018 shows that 28% were not accompanied by an impact assessment. For 19.5%, no impact assessment was actually needed according to the Commission requirements. For the remaining 8.5%, exceptions were granted. The need to act urgently, thus limiting the time available to gather evidence and prepare an impact assessment report with the associated consultation activities, was the most common reason justifying such exceptions. Proposals to address the migration crisis account for nearly half of all exceptions, but there were others to tackle the security and economic crises. Contrary to the Commission's commitment, for a limited number of proposals (7% of all cases), no reason was publicly communicated for the lack of an impact assessment (be it due to an exception or not).

Stakeholders consult and appreciate the Commission's impact assessments. They notice and complain about cases where no impact assessment was provided. The European Parliament and the Council have been particularly critical because they base their own analyses on the Commission impact assessments and have reported that the impact assessment makes finding political agreement easier. Civil society, social partners and the business and research communities consider that the absence of an impact assessment undermines transparency and credibility. Some Commission officials consider exceptions undermine the fair application of the better regulation system across departments (and thus are an impediment to buying into the system).

Which impacts should be assessed?

Respondents to the public consultations were generally positive about the extent to which the Commission takes into account evidence and impacts⁶¹. More than two thirds of those who expressed an opinion thought the Commission takes into account at least partially the evidence, social and environmental impacts and subsidiarity and the role of different levels of public authorities.

There is, however, also a clear expectation that impacts could be better taken into account, although views differ on which impacts. Business organisations and many public authorities support a strong focus on economic considerations, including for small and medium enterprises (SMEs) and the digital dimension. Individuals, civil society and academia urge the Commission to look more at society as a whole and not to overemphasise the need to quantify impacts. Respondents to the public consultation also point to the impact that legislation has on equality, health, poverty and the safeguarding of fundamental rights and the need to uphold environmental and consumer standards. Many consultees urge paying greater attention to the impacts on individuals, Member States or industrial sectors rather than providing aggregated estimates at EU level. Purnhagen & Feindt (2015)⁶² point to the lack of a consolidated approach in this regard. Some NGOs and academics⁶³ propose systematically considering the Sustainable Development Goals in impact assessments or integrating the six mainstreaming

⁶¹ Questions 3 to 5 of the public consultation.

⁶² Purnhagen, K. P., & Feindt, P. H. (2015). Better Regulatory Impact Assessment. *European Journal of Risk Regulation*, 361–368.

⁶³ Renda, A. (2017a). How can Sustainable Development Goals be 'mainstreamed' in the EU's Better Regulation Agenda? *CEPS Policy Insights*, 12(March), 1–17.

objectives⁶⁴ set out by the EU treaties. Others highlight the need to better assess impacts on developing countries as a key prerequisite to live up to the EU commitment to policy coherence for development.

The Council's General Secretariat acknowledges the usefulness of impact assessments for the legislative procedure. However, the Secretariat thinks that the impact assessment could provide even greater value if it anticipated the concerns of Member States and provided Member State-specific information about the expected impacts of policy options.

Union legislation may have particularly significant effects at local and regional levels and for public authorities ('territorial impacts'). This is understandably a concern for the Committee of the Regions, the European Economic and Social Committee and national authorities. It was also raised by the 'Task force on subsidiarity and proportionality' in its report of 10 July 2018⁶⁵. The Commission has developed methodologies for territorial impact assessments⁶⁶ that have been tested on a number of legislative proposals since 2016. The Commission's approach is to assess these impacts when they are relevant for the decision-making process and it is proportionate to do so (for example, if there are large variations between regions). In its October 2018 Communication⁶⁷, the Commission indicated that it intends to raise the importance of this issue in its guidance to staff. However, it is not always obvious that such effects are likely or that the raw data exist to allow a detailed assessment to be made. The more active involvement of local and regional authorities in consultation processes is an essential element of improving the quality of assessments of territorial impacts.

Stakeholders' demand for greater and more detailed analysis of impacts needs to be duly taken into account, but as Smismans⁶⁸ cautions, the list of impacts the Commission is asked to address continues to grow.

The quality of analyses presented in impact assessments (and evaluations) is often limited by the availability of relevant information. Commission officials draw attention to the difficulties they have in gathering reliable, comprehensive data and applying methodologies coherently and transparently across a wide variety of policy fields and across all Member States. This is part of a more general problem of knowing how legislation is working. The fact that only a tiny fraction of co-legislators' amendments to the Commission's are assessed each year places greater pressure on subsequent evaluations to establish whether the resultant legislation works effectively and efficiently.

⁶⁴ In their analysis, these objectives are gender equality; the horizontal social clause; non-discrimination on the basis of gender, racial or ethnic origin, religion or belief, disability, age or sexual orientation; environmental policy integration for sustainable development; consumer protection; securing fundamental rights (Smismans & Minto, 2017).

⁶⁵ https://ec.europa.eu/commission/sites/beta-political/files/report-task-force-subsidiarity-proportionality-doing-less-more-efficiently_1.pdf

⁶⁶ https://ec.europa.eu/info/files/better-regulation-toolbox-33_en

⁶⁷ COM(2018) 703 final of 23 October 2018 Communication from the Commission to the European Parliament, the European Council, the European Economic and Social Committee and the Committee of the Regions: The principles of subsidiarity and proportionality: Strengthening their role in the EU's policymaking

⁶⁸ Smismans, S. (2015). Policy evaluation in the EU: The challenges of linking ex ante and ex post appraisal. *European Journal of Risk Regulation*, 6(1), 6–26. <https://doi.org/10.1017/S1867299X00004244S1867299X00004244>

Mechanisms to ensure that relevant performance data are collected are also not systematically established.

The stocktaking exercise shows that, above and beyond stakeholders' legitimate individual preferences for specific types of impacts, there is a need to consider structural issues such as the great diversity of the Commission's initiatives, the specific challenges of analysis at a supranational level and the existing constraints in terms of available resources, time and skills⁶⁹. While efficiency gains and marginal improvements to the current system are surely achievable and should be sought, these factors inevitably limit the quality and breadth of the analysis and lead to differing views on its proportionality. The importance of preserving the balance and comprehensiveness of the Commission approach to impact assessment should also be taken into account.

One tool, too many objectives?

Impact assessments serve several purposes. First and most importantly, they aim to inform the Commission's political decisions on new political initiatives. However, they also serve other goals. They promote public transparency and accountability by explaining the evidence base and the analysis the Commission took into account when taking its decision. In doing so, impact assessments are also a key document the Commission uses to report on the results of its consultations and their use. They also play an important role in following up and reporting on the assessment of subsidiarity and proportionality and, whenever relevant, various cross-cutting policy commitments⁷⁰. Crucially, they also assist the European Parliament and the Council during the legislative procedure. Finally, by explaining expected causation chains, setting objectives and estimating expected impacts, impact assessments should serve as a key reference point for any subsequent evaluation.

Some Commission officials pointed out that the final impact assessment report has to satisfy competing demands and therefore represents a compromise. Some of the groups consulted wondered to what extent impact assessments inform policy development as opposed to merely justifying a pre-determined/preferred policy option. The Impact Assessment Institute (2017)⁷¹ (among other stakeholders and authors) argues that impact assessments should always be neutral and make a genuine attempt to assess all policy options. Other Commission officials questioned whether the resources required to prepare an impact assessment were proportionate to the benefits and the limited readership. Nonetheless, they find that the process of writing an impact assessment provides a good, systematic preparation for later negotiations and communication about the Commission's proposals.

The 40 or so pages of an impact assessment can prove insufficient in the case of complex legislative proposals with many dimensions. At the same time, the impact assessment

⁶⁹ Timing constraints in the evaluation and public consultation for the preparation of the impact assessments supporting the proposals for the next Medium Term Financial Framework provide an example.

⁷⁰ SMEs test, innovation principle, competitiveness proofing, policy coherence etc

⁷¹ Impact Assessment Institute. (2017). Final study: A year and a half of the Better Regulation Agenda : what happened ?

report and the technical information in it can be overwhelming for the non-expert public and a complex read for policy-makers themselves⁷².

Respondents to the public consultation also frequently pointed out that the Commission's impact assessments are outdated the moment they are published, because amendments are rarely subject to impact assessments during the negotiations between the co-legislators. The perceived partial implementation of the Interinstitutional Agreement in this regard is widely seen as problematic.

The quality and objectivity of an impact assessment report is ultimately vouched for by the Regulatory Scrutiny Board (see 4.3.). Impact assessments are made public together with the Board opinion when the Commission proposal is adopted. The feedback mechanism on proposals allows the public to provide its views on its quality and objectivity.

Resources and support for Commission staff

In the Commission, policy teams responsible for individual initiatives are directly tasked with carrying out any accompanying impact assessment. Given existing safeguards on the objectivity of the analysis, this is considered a desirable feature that maximises the relevance of impact assessments for the policy process. It has, however, a cost as the quality of impact assessments (and evaluations) reflects the diverging levels of expertise and experience of Commission staff who do not typically undertake impact assessments (and evaluations) on a continuous basis. Individual members of staff are unlikely, therefore, to be experts in evaluation and impact assessment methodology. Some departments have support teams that can provide assistance. During the consultation activities supporting the stocktaking, these support units indicated that while there were guidance documents, individual policy officers often pointed out they were under too much time pressure to familiarise themselves sufficiently with these documents and that there was too little learning from the experience built up within the institution. Staff indicated a desire for more face-to-face meetings with experienced colleagues to learn from them, share best practice and nurture a common understanding of better regulation. For example, they suggested:

- a very early kick-off meeting of the project team with the better regulation support units to discuss procedures, timelines, scope and methods;
- an earlier upstream meeting with the Regulatory Scrutiny Board to seek guidance and avoid problems later down the line;
- communities of practice to learn from the recent experience of colleagues in other directorates-general that have carried out similar projects and to share best practice between better regulation support units;
- facilitating a more effective use of in-house analytical capacity such as that provided by JRC or Eurostat.

Finally, the consultations showed that policy officers are of the opinion that they do not have the time to follow more than the basic training courses. Consequently, more

⁷² The General Secretariat of the Council stressed the importance of the executive summary in comparison to the lengthy impact assessment itself.

specialised knowledge (for example, about quantification and subsidiarity) is not systematically acquired.

4.2. Evaluation

The various consultation activities revealed several important issues about the Commission's practices on evaluation. The results of these consultations were complemented by reports from the European Court of Auditors and the 'Task force on subsidiarity and proportionality'. The Court found that the Commission had designed a system which is, as a whole, well-managed and quality-controlled⁷³. The OECD has recently reported that the use of evaluations has improved. The EU's evaluation system scores highly in the OECD's 2018 regulatory policy outlook⁷⁴ (4th out of 39 jurisdictions) and has increased its rating since the previous rating in 2015. The opinion of respondents to the public consultation⁷⁵ is mixed, being more or less equally spread between satisfied, neutral or dissatisfied.

The Commission, the other EU institutions and consultative bodies use evaluations to learn to what extent EU policies and spending programmes are working and to gain new insights. Results are used to decide whether legislation and programmes should be revised, but evaluations are really useful when they are well timed, designed to address the key questions and of sufficient quality to provide credible and pertinent answers. Stakeholders have raised issues for all of these factors as described below.

Time the evaluation appropriately

The systematic evaluation of legislation and programmes as part of an integrated policy cycle was one of the principal changes introduced in May 2015. Common sense requires that we should know how legislation works before making proposals to revise it. Commission officials had mixed views about the 'evaluate first' principle. Some argued that it is intuitive and logical, as it closes the policy cycle. Others suggested deciding on the need for evaluations on a case-by-case basis. European institutions, and in particular the Council and the European Economic and Social Committee, firmly supported the principle.

Progress is also being made in applying the 'evaluate first' principle. 78% of impact assessments for amendments of legislation in 2018 were also accompanied by an evaluation. This is up from 50% in 2016.

Evaluating before taking further action is one thing. Evaluating when there are solid conclusions to draw is another matter. Many respondents thought that legislation was given insufficient time to work before initiating evaluations. Evidence from the literature suggests that evaluations carried out too early may not lead to conclusive results and need to be complemented at a later stage⁷⁶. They suggest that evaluations required by legislation should be carried out at a moment in the policy cycle when impacts have

⁷³ Special report 16/2018 Ex-post review of EU legislation: a well-established system, but incomplete <https://www.eca.europa.eu/en/Pages/DocItem.aspx?did=46063>

⁷⁴ <http://www.oecd.org/governance/oecd-regulatory-policy-outlook-2018-9789264303072-en.htm>

⁷⁵ Question 11 of the public consultation.

⁷⁶ EPRS. (2017). Evaluation in the European Commission. Rolling Check-List and State of Play. (Vol. 12).

materialised and data are available to pursue a meaningful evaluation. Improvements can be made if there is a shared understanding between the European Parliament, the Council and the Commission on when to require an evaluation (as opposed to other implementation issues such as transposition reports). The European Court of Auditors also raised these issues in its 2018 audit on ex post reviews.

A specific challenge in this regard concerns spending programmes for which many respondents thought that the evaluation could provide more insight and useful learning for subsequent programmes. A key concern is that end-of-programme evaluations come when the programmes of the next cycle of the multiannual financial framework have already been decided. Similar views have been expressed in the academic literature⁷⁷. Many respondents suggested reconsidering the timing of programme evaluations, but this is challenging given that, due to the need to have a seamless transition between budgetary periods, underlying projects funded by a given multiannual financial framework will not have been completed by the time the next framework has to be prepared. Mid-term evaluations of an ongoing programme that are used for preparing a new generation of programmes would be more useful when building also on the results of the preceding programme.

Then evaluate well

Several interest groups, the Regulatory Scrutiny Board⁷⁸ and the General Secretariat of the Council observed that the Commission's evaluations were of lower quality than its impact assessments. In the literature, it is acknowledged that a widespread practice of policy-related evaluations started somewhat later than impact assessments and need more time to mature further, particularly in terms of design and methodologies⁷⁹. The Board frequently raised issues with design and methodology. Commission departments grapple with several well-known practical evaluation challenges, including when to evaluate and how to best ensure ownership and independence.

Timing obviously plays a role in the final quality of an evaluation, but data availability and data quality, more generally, are a strong concern for several interest groups. On quantification, a number of Commission officials thought that the lack of appropriate data is the most important problem affecting the quality of evaluations. Comparable EU-wide data are often not available, which makes it difficult to quantify impacts. Some of the literature reviewed made a similar point⁸⁰. The European Parliament Research Service suggested applying clear quality criteria, in particular for non-governmental data, together with a clear prioritisation for data collection. The Committee of the Regions sees a role for the newly created [Network of Regional Hubs for EU Policy Implementation](#)

⁷⁷ For example: 'Evaluation could come too late to inspire the next programme round' (Smismans, 2015); 'Emphasis on the timing of analysis is crucial for being able to inform the legislative process' (Broughel, 2015); 'Given the length of the policy cycle, evaluation cannot meaningfully start before a minimum of ten years from initial work on a proposal. This period exceeds two EC terms.' (Golberg, 2018).

⁷⁸ https://ec.europa.eu/info/publications/regulatory-scrutiny-board-annual-report-2017_en

⁷⁹ Smismans, S. (2015). Policy evaluation in the EU: The challenges of linking ex ante and ex post appraisal. *European Journal of Risk Regulation*, 6(1), 6–26. <https://doi.org/10.1017/S1867299X00004244S1867299X00004244>

⁸⁰ For example, Golberg, E. (2018). "Better Regulation": European Union Style, (98); De Feo, A. (2017). Better Regulation: Scrutiny of EU Policies. In A. De Feo & B. Laffan (Eds.), *Scrutiny of EU Policies* (pp. 2–13). European University Institute, Robert Schuman Centre for Advanced Studies.

[Review \(RegHub\)](#) ⁸¹ in gathering data on regional impacts to inform better the Commission's evaluations and impact assessments.

Some Commission officials think that the evaluation process is too long and that systematic data collection via well-defined monitoring (instead of ad hoc collection) would substantially shorten the evaluation process and improve the quality of the analysis. They noted that there is a trade-off between the pressure to reduce the administrative burden of systematic monitoring in the original proposal and the availability of evidence when it comes to the evaluation. Solutions may emerge when paragraphs 22 and 23 of the Interinstitutional Agreement on Better Law-Making will be implemented in a more consistent manner. This calls on the three institutions to consider including monitoring and evaluation provisions in each basic act of Union law. A good impact assessment forms the basis for a good evaluation because the impact assessment sets out problems, objectives and indicators to monitor and appraise the success of the policy. Subsequently, to avoid excessive administrative burden, legislative proposals need to establish adequate monitoring requirements and data collection verifying that the data is not already being collected under some different legislative framework.

The way in which evaluations are carried out and presented is another factor affecting their quality, but views on this appear to vary.

Whether the Commission should conduct evaluations internally or involve external contractors or other institutions met with mixed views. Commission officials shared the view that conducting the evaluation internally allows in-house expertise to be built up and used more frequently. Some officials were also sceptical about the quality of the contractors' work and the quality of service they provide. Similar views were expressed in the literature⁸². In particular, various authors questioned the Commission's capacity to conduct its own internal consultations, while others thought that external evaluations were more objective, which was important for spending programmes but less so when evaluating legislation. Some authors questioned the ability of external contractors to perform policy evaluations. A number of Commission officials thought that it was necessary to use external studies due to the limited capacity to cope with an increased workload and sometimes the need for specific (methodological) expertise. Some of the respondents to the public consultation argued that evaluations should be outsourced or conducted by the European Parliament and the Member States.

Some Commission officials and respondents to the public consultation called for a flexible application of the rules and procedures to make evaluations more meaningful, given the wide variety of policy areas covered by evaluations. Others urged for additional codification, standardisation, formal oversight and requirements to ensure that the scientific evidence and analyses are of the highest quality. Additionally, respondents to the public consultation and the European Economic and Social Committee wanted

⁸¹ <https://cor.europa.eu/en/our-work/Pages/network-of-regional-hubs.aspx>

⁸² Eliantonio, M., & Spendzharova, A. (2017). The European Union's New "Better Regulation" Agenda: Between Procedures and Politics. *European Journal of Law Reform*, 19(1–2), 3–15. <https://doi.org/10.5553/EJLR/138723702017019102001>

Ruhl, G. (2017). (Ex post) Evaluation of Legislative Actions in the European Union : The Example of Private International Law.

Smismans, S. (2017). The Politicization of ex post Policy Evaluation in the EU. *European Journal of Law Reform*, 19(1–2), 74–96. <https://doi.org/10.5553/EJLR/138723702017019102005>

evaluations to address more comprehensively the transposition of directives into national law and the manner in which they are implemented.

Finally, evaluation lessons must be clearly communicated and brought to bear on policymaking. The requirement for an evaluation staff working document⁸³ introduced in 2015 aims to present the results of the evaluation process in a self-standing and uniform format. Commission officials generally saw it as helpful in logically structuring the assessment, but they considered it unsuitable for communicating with the public, and some thought it redundant when there is a good evaluation report that has been prepared by external contractors.

Analysis of empirical evidence shows that the links between impact assessments and evaluations were limited in the past⁸⁴. The European Court of Auditors reported that in legislation adopted by Council and European Parliament between 2014 and 2016 ex post reviews were not always used when preparing impact assessments⁸⁵. Several respondents to the public consultation also said that the evaluation results needed to be utilised better when performing impact assessments⁸⁶.

4.3. Regulatory Scrutiny Board

Providing the best possible basis for timely and sound policymaking requires the capacity to provide high quality, objective analyses of what works, what does not and why. Under Commission policy, a Regulatory Scrutiny Board (the Board) scrutinises the quality of such analyses and supports their improvement. This is in line with OECD best practices⁸⁷ according to which regulatory oversight by a standing body close to the centre of government should play a key role in this context.

The Board was set up by the President of the Commission as part of the overall May 2015 better regulation package. It has seven full-time members who do not have any policymaking responsibility. Each member serves for a period of 3 years. Three members are also recruited from outside the EU's institutions. Together, these changes represent substantially stronger guarantees of the Board's independence in exercising its scrutiny function compared to its predecessor, the Impact Assessment Board established in 2007.

What does the Board do?

⁸³ A staff working document is prepared by the Commission departments and is not a political document which is formally agreed or adopted by the College of Commissioners. It should provide only factual information.

⁸⁴ Van Golen, T., & van Voorst, S. (2016). Towards a regulatory cycle? The use of evaluative information in impact assessments and ex-post evaluations in the European Union. *European Journal of Risk Regulation*, 7(2), 388–403.

⁸⁵ ECA. (2018). Ex-post review of EU legislation: a well-established system, but incomplete. Special Report of the European Court of Auditors 6/2018, (16)

⁸⁶ For matters of urgency, evaluations are sometimes carried out back-to-back with impact assessments (see toolbox tool #52 https://ec.europa.eu/info/files/better-regulation-toolbox-52_en). Commission officials had mixed views on impact assessments and evaluations carried out back-to-back. Some thought that in this case the evaluation results might be pre-judged and thus not useful to inform the impact assessment. Others found it a pragmatic and efficient way to comply with the 'evaluate first' principle. The European Court of Auditors has made some similar observations.

⁸⁷ <http://www.oecd.org/gov/regulatory-policy/governance-regulators.htm>

The Board performs a quality check on impact assessments and evaluations to improve them and ultimately to improve the Commission’s proposals and the legislation adopted by the co-legislators.

Box 2. The Board’s work in its own words⁸⁸

‘The Board evaluates the quality of an impact assessment report based on the Commission’s Better Regulation Guidelines and verifies whether the minimum standards are met. However, in doing so, the Board also takes into account the context of each initiative and the proportionality of the analysis, meaning that the depth of the analysis should match the importance of the initiative. It considers how an individual initiative fits within the wider sectoral regulatory environment, to what extent it responds to political orientations that have already been agreed by the relevant EU institutions, and whether there is a legal obligation to act. Timing constraints of the initiative are sometimes a factor when judging the availability of evidence, of prior evaluations and of comprehensive stakeholder consultations.’

The Board’s mandate is wider than that of its predecessor. The new Board looks at selected evaluations (and fitness checks) in addition to all impact assessments. It checks their quality before they are shared with the Commission’s departments in the interservice consultation and issues recommendations for their improvement. In 2017, the Board introduced positive and negative opinions⁸⁹ for evaluations. Additionally, in late 2016 the Board began distinguishing between ‘positive opinions’ and ‘positive opinions with reservations’ for impact assessments. It also overhauled its system of indicators to monitor the quality of the reports submitted. The new system consists of 10 quality components for impact assessments⁹⁰ and 6 quality components for evaluations⁹¹. These allow the Board to track changes in the quality of an impact assessment or evaluation.

What has the Board done?

After replacing the Impact Assessment Board in May 2015, the Regulatory Scrutiny Board became fully staffed and operational within the following year. Each year the Board publishes reports on its own work that also provide insight into the wider application of better regulation⁹².

The following table and graphs present key statistics on the Board’s scrutiny activities since its creation.

Table 4 Opinions issued by the Regulatory Scrutiny Board, 2015-2018

		<i>RSB opinion</i>	<i>2015</i>	<i>2016</i>	<i>2017</i>	<i>2018</i>
Impact	First	Positive	15	22	12	22

⁸⁸ https://ec.europa.eu/info/law/law-making-process/regulatory-scrutiny-board_en#annual-reports

⁸⁹ Negative opinions for fitness checks and evaluations do not imply that the report to the Board has to be submitted again, as they do for impact assessments.

⁹⁰ Context and scope; Problem definition and use of evaluation, Subsidiarity and EU value added; Objectives and intervention logic; Baseline and options; Impacts; Comparison of options and proportionality; Future monitoring and evaluation; Consultation, information base and methodology; Presentation.

⁹¹ Design and methodology; Effectiveness and efficiency; Relevance and EU value added; Coherence; Validity of conclusions; Presentation.

⁹² https://ec.europa.eu/info/law/law-making-process/regulatory-scrutiny-board_en#annual-reports

assessments	submission	Positive with reservations	0	13	18	33
		Negative	14	25	23	21
	Second submission	Positive	10	16	7	9
		Positive with reservations	0	0	16	9
		Negative	1***	1	2	1**
Evaluations	First submission	Positive	-	7*	10	8
		Negative	-		7	3
	Second submission	Positive	-	-	4	1
		Negative	-		0	0

* In 2016, evaluations received opinions with comments, without 'positive' or 'negative'.

** a third submission received a positive opinion with reservation

*** no proposal was presented following the negative opinion

In 2015, the Board's recommendations for impact assessments focused primarily on defining the problems to be tackled, considering and presenting stakeholders' views and describing and assessing options. In 2016, the Board's annual report flagged problem analysis and development of options as 'common weaknesses'. In 2017, negative opinions were most often issued when the rationale for policy action was not convincing or the analysis of the baseline and options showed shortcomings. In 2018, the Board highlighted problem definition, use of evaluation, the design of options and their comparison as being initially the weakest part of impact assessments.

Comparable statistics for evaluations were available for the first time in 2017. Coherence, presentation, relevance and EU value added were the most common issues raised when the Board issued negative opinions. The Board observed that often the evaluation questions were not appropriate or could not be answered. Additionally, they pointed out that often either data were not available or were not compared against a baseline or definition of success.

What has the Board achieved?

The Board acted as the Commission's quality control body for the analysis supporting its political decisions. In principle, when the Board issues a negative opinion on an impact assessment, the policy process is put on hold until the quality of the underlying evidence reaches a sufficient level. This has been the norm. In three cases⁹³, however, the Commission took the political decision to go forward with an initiative despite the absence of a positive Board opinion vouching for the adequateness of the underlying impact assessment. In all of these cases, the Commission carried through on its commitment of May 2015 to explain publicly why. Initiatives were also typically adapted to address the weaknesses in the underlying evidence base.

⁹³ Review of the appropriate prudential treatment for investment firms COM(2017)790

Renewable Energy Directive COM/2016/767

Proposal for a regulation on a framework for the free flow of non-personal data in the European Union - COM(2017)495

Box 3. An example of a proposal presented after a negative opinion by the Board

- In the negative opinion on the impact assessment⁹⁴ on the proposal for a framework for the free flow of non-personal data in the European Union, the Regulatory Scrutiny Board found that the report did not make the case for EU action and did not assess appropriately the proportionality of the options. The revised report received a second negative opinion from the Regulatory Scrutiny Board. The Board found that the report particularly failed to make the case for a new right for the portability of cloud services. The initiative was adopted by the College without the provisions establishing mandatory portability of cloud services, but with self-regulatory measures instead.

The Board also managed to improve the quality of the draft impact assessments and evaluations submitted to it. Evidence of its success in doing so comes from several sources. First, the rate of negative opinions has been dropping for both impact assessments and evaluations⁹⁵. Secondly, the monitoring system established by the Board shows that the quality of the draft impact assessments and evaluations submitted is improving gradually. The quality components applied by the Board also show an improvement in quality following the Board's scrutiny. The weakest impact assessments are improving the most. However, the Commission's departments are less diligent in improving draft impact assessments that receive a positive opinion with reservations. Early meetings between the Board and the team drafting the impact assessment or evaluation significantly increased the quality of the submitted reports.

Finally, consultation activities undertaken by the Board and by the Commission's departments reveal that the Board is widely seen as adding value to the policymaking process and improving impact assessments and evaluations. Nearly 90% of the respondents to the public consultation who were familiar with the Board think it adds value to the regulatory process. Commission officials view the regulatory scrutiny process (with a hearing at the Board) as providing excellent preparation for the negotiations with the European Parliament and the Council and as an opportunity to rehearse how to explain their proposal to non-experts.

Evidence and the general views of stakeholders thus suggest the Board has been performing its tasks in a successful manner. However, some areas of concern remain.

First, despite stronger assurances of independence and a high rate of negative opinions, views on the Board's impartiality and independence remain mixed. Proposals to increase independence were most commonly voiced by stakeholders in the public consultation but also by the Council. The latter wants the President of the Commission to establish a secretariat for the Board that is independent from the Commission and to recruit all members externally. However, Meuwese⁹⁶ cautioned that true independence was most likely unattainable and perhaps undesirable, given the need to retain the relevance of the impact assessment to the policymaking process.

Secondly, some Commission officials expressed concerns that the Board's demands for additional analysis and information are not proportionate to the specific initiative.

⁹⁴ <https://ec.europa.eu/digital-single-market/en/news/proposal-regulation-european-parliament-and-councilframework-free-flow-non-personal-data>

⁹⁵ For a more detailed explanation of the latter see https://ec.europa.eu/info/law/law-making-process/regulatory-scrutiny-board_en#annual-reports

⁹⁶ Meuwese, A. C. M. (2015). Regulatory scrutiny in transition. *European Journal of Risk Regulation*, 6(3), 359–360. <https://doi.org/10.1017/S1867299X0000475X>

Additionally, some Commission staff expressed concern that the Board does not apply its standards consistently to all impact assessments (such as its demands for quantified information). Few professionals responding to the public consultation and academics⁹⁷ find that external experts, such as economists and social scientists, could usefully support the Board on a case-by-case basis.

Thirdly, the public is largely unaware of the Board's activities. Among individuals responding to the public consultation, 320 (74%) out of 433 said that they were not familiar with the Board or barely so, compared to 64 (39%) out of 163 professionals.

Finally, there are contrasting views on whether the Board should expand its activities. The academic literature and various stakeholders have suggested widening the role and responsibilities of the Board so that it becomes a body ensuring compliance with many more aspects of better regulation; for example, checking the quality of roadmaps, scrutinising more evaluations, checking delegated acts and the final content of legal proposals (in relation to the impact assessment) and sanctioning exceptions from better regulation requirements. Moreover, some academics⁹⁸ expect that the Board will develop to ultimately serve the European Parliament, the Council and the Commission. Others⁹⁹ see the Board moving to an oversight role in a manner similar to the Court of Justice, European Court of Auditors or the Ombudsman. The Commission's proposal for each institution to be able to call for an independent panel to assess the impacts of amendments to the legislative proposal was discarded during the negotiation of the 2016 Interinstitutional Agreement on Better Law-Making

4.4. Subsidiarity and proportionality

The Union must respect the powers given to it by the Member States. Protocols No.1 and No.2 of the Treaties create the mechanism to ensure this happens and they give national parliaments a key role in checking conformity with the subsidiarity principle. The Commission presents an assessment of subsidiarity and proportionality of its proposals both in the impact assessment report and in the explanatory memorandum accompanying the Commission's legal proposal. The Commission does not translate the impact assessment into all official languages but does translate the explanatory memorandum. The Commission has established guidance on how to perform these assessments¹⁰⁰.

However, most assessments of subsidiarity presented in impact assessments tend to be rather general and qualitative in nature. They appear at the beginning of the impact assessment report and do not use relevant analyses which come later in the report as part of the assessment of policy options. The assessment of subsidiarity is also separate from the assessment of the proportionality of the various policy options. This is confirmed by

⁹⁷ Radaelli, C. M. (2018). Halfway Through the Better Regulation Strategy of the Juncker Commission: What Does the Evidence Say? *JCMS: Journal of Common Market Studies*, 56, 85–95. <https://doi.org/10.1111/jcms.12768>

⁹⁸ Meuwese, A. C. M. (2015). Regulatory scrutiny in transition. *European Journal of Risk Regulation*, 6(3), 359–360. <https://doi.org/10.1017/S1867299X0000475X>

⁹⁹ Wiener, J. B., & Alemanno, A. (2017). Comparing regulatory oversight bodies: the US Office of Information and Regulatory Affairs and the EU Regulatory Scrutiny Board. In S. Rose-Ackerman, P. L. Lindseth, & B. Emerson (Eds.), *Comparative Administrative Law* (2nd ed., pp. 333–351). Edward Elgar Publishing. <https://doi.org/10.4337/9781782540854>

¹⁰⁰ See tool #5 on Legal basis, subsidiarity and proportionality: https://ec.europa.eu/info/files/better-regulation-toolbox-5_en

responses to the consultation that stated that current assessments are overly legalistic and formalistic and that assessments should be based on evidence. Professionals noted that harmonisation and cross-border activity were too often used to justify EU action. In this context, it was stated that 20 or more different national approaches do not necessarily imply a need for harmonisation, but could also be evidence that the Member States have successfully tackled the problem.

Therefore, the ‘Task force on subsidiarity, proportionality and doing less more efficiently’ set up by President Juncker on 14 November 2017 included recommendations meant to improve the assessment of subsidiarity and proportionality in its final report¹⁰¹.

Box 4: Task force’s key recommendations on impact assessments

Recommendation 1

A common method (“assessment grid”) should be used by the Union’s institutions and bodies and by national and regional parliaments to assess issues linked to the principles of subsidiarity (including EU added value), proportionality and the legal basis of new and existing legislation.

This assessment method should capture the criteria contained in the Protocol on subsidiarity and proportionality originally attached to the Amsterdam Treaty and relevant jurisprudence of the European Court of Justice. [A proposed model assessment grid is annexed to this report]

During the legislative process, the European Parliament and the Council should systematically review the subsidiarity and proportionality of draft legislation and the amendments they make using the common method. They should take full account of the Commission’s assessment presented in its proposals as well as the (reasoned) opinions of national Parliaments and the European Committee of the Regions.

Recommendation 5

The Commission should ensure that its impact assessments and evaluations systematically consider territorial impacts and assess them where they are significant for local and regional authorities. Local and regional authorities should help to identify such potential impacts in their consultation responses and feedback on roadmaps.

The Commission should revise its better regulation guidelines and toolbox accordingly and address issues linked to the implementation and EU added value of legislation, and to ensure greater visibility of the Commission’s assessments of subsidiarity, proportionality and relevant territorial impacts in its proposals and accompanying explanatory memoranda.

On 23 October 2018, the Commission already set out in broad terms how it would respond to the task force¹⁰². In particular, it committed to incorporate the ‘grid’ for assessing subsidiarity and proportionality in its better regulation guidance and to use the grid to present its findings in impact assessments, evaluations and explanatory memoranda¹⁰³. To avoid a piecemeal approach, this should be done concomitantly with any revision / update of better regulation guidelines and tools the next Commission may

¹⁰¹ https://ec.europa.eu/commission/sites/beta-political/files/report-task-force-subsidiarity-proportionality-doing-less-more-efficiently_1.pdf

¹⁰² COM(2018) 703: Communication entitled: ‘*The principles of subsidiarity and proportionality: Strengthening their role in the EU’s policymaking*’.

¹⁰³ The Commission also committed to target the views of local and regional authorities better in its consultation activities and to look more carefully at existing legislation (including delegated and implementing acts) from the viewpoint of subsidiarity, proportionality, legislative density, simplification and the role for local and regional authorities. These issues are dealt with in other sections of this document.

opt for. It will then need to be decided whether the assessment grid should be annexed to the impact assessment report or attached to the explanatory memorandum accompanying the Commission's proposal (whether or not there is an impact assessment). Since the memorandum is translated in all languages, it would offer a wider coverage and reach but would imply additional translation costs.

5. KEEPING THE EXISTING STOCK OF LEGISLATION FIT FOR PURPOSE

Legislation should remain fit for purpose and deliver the results that EU lawmakers intended and people expected. The Commission focuses on tackling unnecessary costs and eliminating administrative burdens without compromising policy objectives. Making legislation simpler and less burdensome also improves implementation and enforcement, and ultimately delivers better results.

To pursue these objectives, the Juncker Commission progressively mainstreamed the REFIT programme, supported it with the establishment of the REFIT Platform, and communicated more extensively on its results.

5.1. The REFIT programme

REFIT is the programme for the Commission's actions to ensure existing legislation is simple, efficient and fit for purpose. Strengthened in the May 2015 better regulation package, the REFIT programme was mainstreamed in 2017¹⁰⁴. The Commission now seeks to achieve REFIT goals whenever any existing law is due to be reviewed. The exact operational implications of this were explained in an appropriately revised version of the better regulation tool¹⁰⁵. In addition, all evaluations now seek to identify elements for simplification and burden reduction.

While the Commission has repeatedly stressed that REFIT is not deregulatory and does not undermine existing policy objectives by removing unnecessary costs, responses from some NGOs and individuals to the stocktaking exercise continue to criticise the Commission's approach for putting at risk social, environmental, consumer and employment objectives. National authorities in the stocktaking consultation supported the Commission's efforts to review and simplify legislation. The European Parliament suggested that the Commission's work programme should identify REFIT evaluations/initiatives that could be agreed in the political declaration on priority initiatives pursuant to the Interinstitutional Agreement on Better Law-Making. The Committee of the Regions considers that REFIT provides an essential focus to assess whether implementation is practical and feasible. The Committee also suggested involving the REFIT Platform more closely in evaluations.

Commission officials recognised that the REFIT programme is important for communication purposes to emphasise the European Union's focus on tackling unnecessary costs and to stress the value the Union places on engaging with its people.

¹⁰⁴ SWD(2017)675 Overview of the Union's efforts to simplify and reduce regulatory burdens: https://ec.europa.eu/info/sites/info/files/overview-union-efforts-to-simplify-and-to-reduce-regulatory-burdens_en.pdf

¹⁰⁵ See tool #2 on the Regulatory Fitness programme and the REFIT Platform: https://ec.europa.eu/info/files/better-regulation-toolbox-2_en

The challenges of quantifying regulatory burdens is an aspect of REFIT that several officials underlined..

5.2. REFIT Platform

The Commission established the REFIT Platform in May 2015. The key purpose of this expert group chaired by the Commission’s First Vice President is to provide the REFIT process with bottom-up input by collecting and considering stakeholders’ views on possible improvements to legislation. The Platform issues recommendations to the Commission, which committed itself to explain systematically how it intended to follow up on these. The Platform comprises two groups. The first is made up of experts from different parts of civil society, while the second group has an expert from each Member State government. It met for the first time in January 2016, following the formal process to appoint its members. By 31 December 2018 the Platform had received 684 submissions from various parts of civil society. The Platform responded to all of these submissions and adopted 89 opinions covering 129 of the submissions¹⁰⁶.

Table 5 REFIT Platform-related activities.

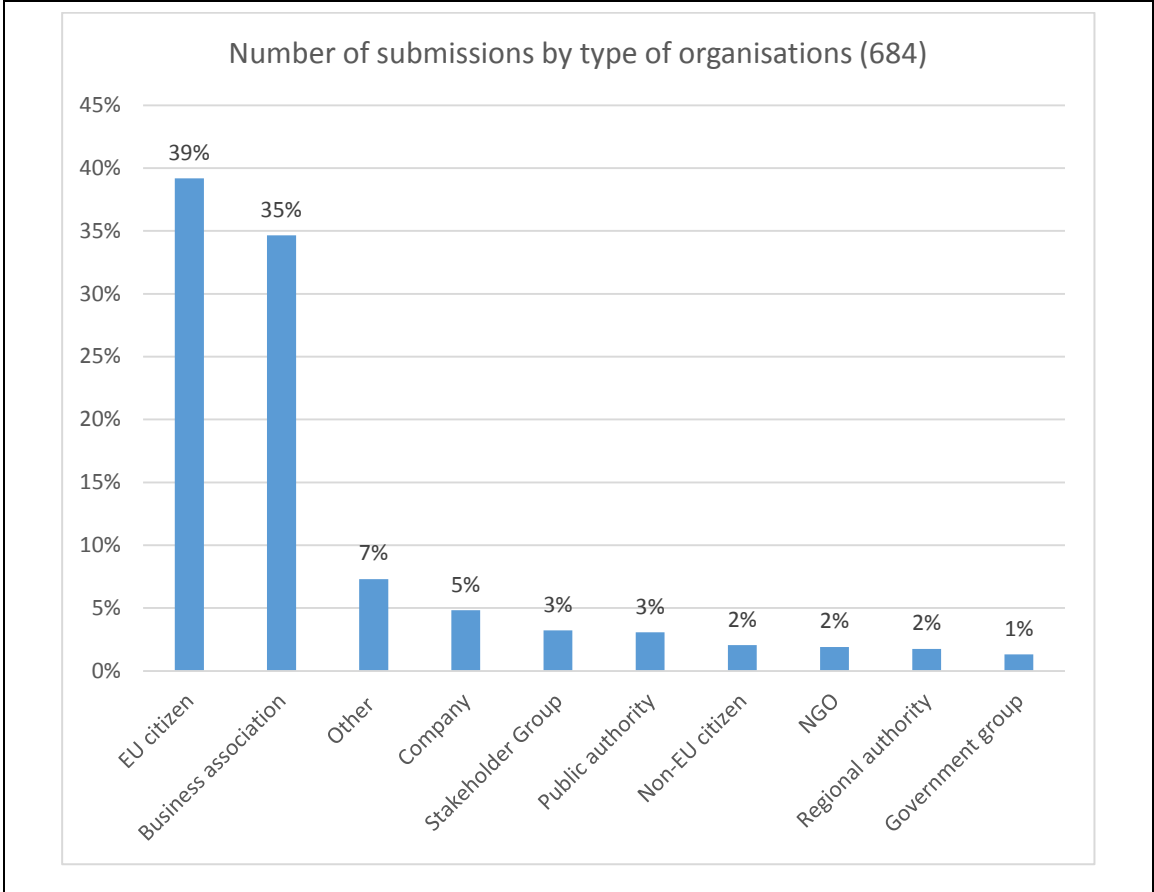
<i>Numbers</i>	<i>2015</i>	<i>2016</i>	<i>2017</i>	<i>2018</i>
Feedback on the ‘Lighten the Load’ website and ‘Have Your Say’ portal	294*	212	64	112
Platform opinions	-	24	45	20

**Includes 34 submissions sent to the Commission in 2014 before the Platform existed.*

Business associations and EU citizens accounted for almost three quarters of all 684 submissions. Public authorities (including local and regional authorities) accounted for approximately 5% of submissions. The 268 submissions from individuals resulted in only five opinions of the Platform. This is because they were largely covering other aspects or issues than those in the remit of the REFIT platform. Individual submissions covered many policy areas but the area most covered was agriculture (30) followed by financial services (13), education (13) and the internal market (12).

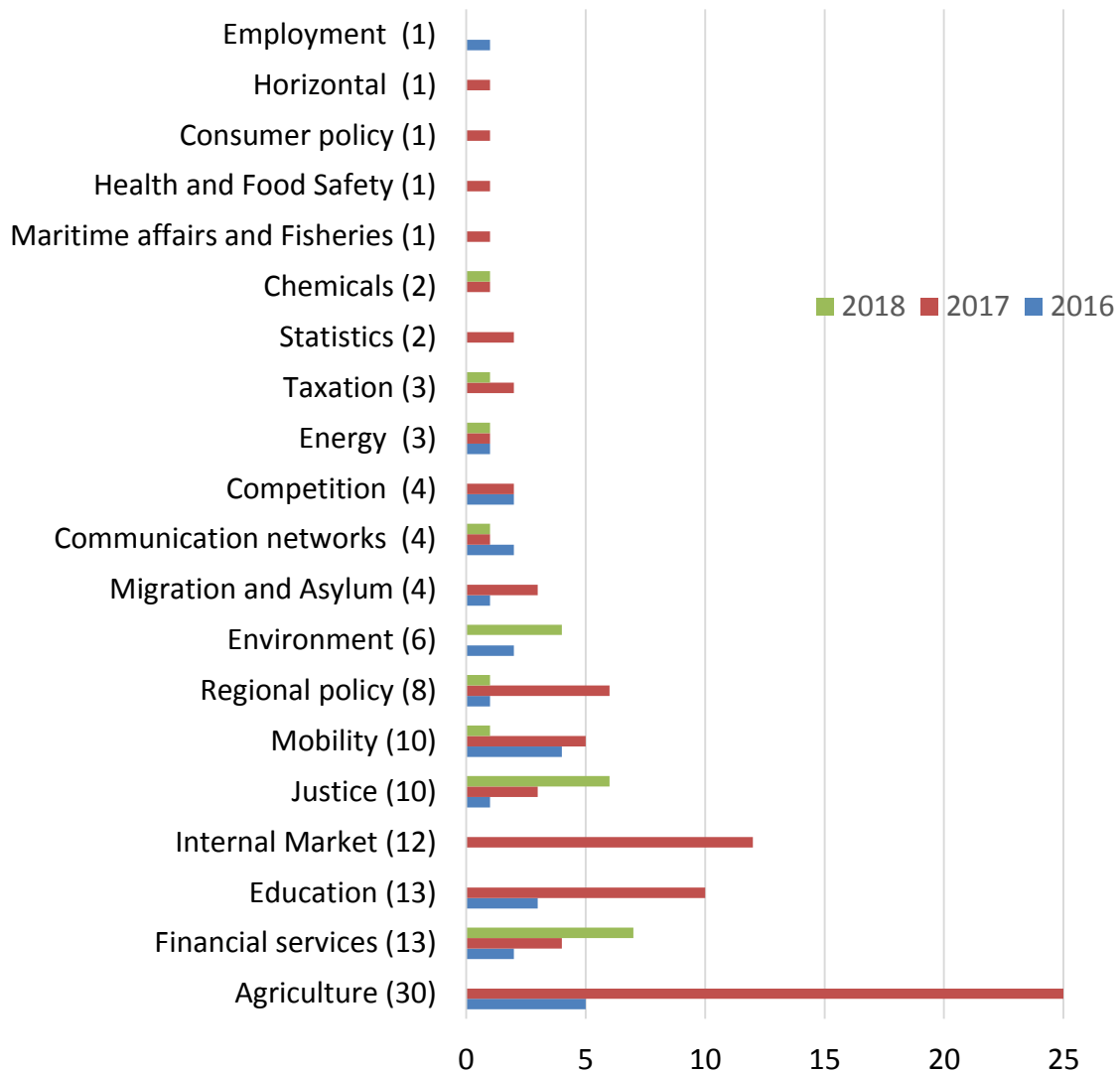
Box 5. Organisations making submissions to the REFIT Platform

¹⁰⁶ Several submissions from stakeholders simply included requests for information or addressed subjects beyond the mandate of the REFIT Platform.



Box 6. Policy areas covered by the submissions to the REFIT Platform

Number of submissions (129) covered by the adopted opinions (89) per year



The consultation activities revealed mixed opinions from external stakeholders and Commission staff. Stakeholders want a wider mandate and better reporting on the follow-up to opinions. A number of Commission officials find the Platform provides little added value to what they already know but requires relatively disproportionate resources. However, some Commission officials recognised that better ways to gather evidence from regional and local levels (perhaps via the Committee of the Regions) and from closer links with stakeholders through dedicated conferences would be beneficial.

Industrial organisations pointed to the need to raise awareness about the Platform to increase submissions on potentially problematic legislation. The Commission is also urged to publish information on measures that are implemented following each Platform opinion. There should also be better guidelines on how to create a good submission to the Platform and more focus on reducing costs and burdens for SMEs.

The stakeholder group of the Platform has generally taken a more proactive role in setting priorities and leading the work on individual opinions¹⁰⁷. Experts from the national administrations have preferred not to specify priorities in the absence of clear instructions from their governments¹⁰⁸. The Platform's government group has also set clear limits on the number of opinions it is willing to address at any one time (between 5 and 15) and to ensure a clear demarcation between the work of the Council and that of the Platform.

Government responses to the consultation activities clearly support extending the mandate of the Platform into the next Commission and raising the awareness of its work. This is perhaps illustrated by the fact that 40% of the individuals who responded to the consultation did not know whether the REFIT Platform was effective in identifying legislation that can be simplified. They indicated that information is not readily available and is not advertised. The process followed is also difficult to understand.

The European Economic and Social Committee indicated that it would like a stronger representation in the Platform to reflect the interests of its constituents. It would also like the Platform to address cross-cutting topics to improve the quality of legislation in addition to tackling unnecessary costs, and this may include identifying the need for new legislation. The literature review also highlighted the Platform's narrow focus on reducing unnecessary regulatory costs¹⁰⁹.

A dedicated stocktaking exercise undertaken by the REFIT Platform has resulted in an opinion on Future prospects¹¹⁰. It indicates that the Platform itself is satisfied with its contribution to the REFIT agenda and proposes to continue in its current form, with a Stakeholder group and a Government group. The Stakeholder group and the Government group suggest improvements, which are detailed in the opinion. The Committee of the Regions annexed its views to the opinion. It considers that to better achieve its goals, the REFIT Platform should be adapted in terms of approach and structure to review existing legislation also from the perspective of subsidiarity, proportionality, legislative density and the role of local and regional authorities.¹¹¹

Stakeholders want the Platform to be more productive, to gather more ideas for simplification and for concrete changes to flow more quickly from those ideas.

¹⁰⁷ Working methods of the REFIT Platform government group (minutes of the government group meeting of 23 November 2016). https://ec.europa.eu/info/law/law-making-process/evaluating-and-improving-existing-laws/refit-making-eu-law-simpler-and-less-costly/refit-platform/refit-platform-meetings_en

¹⁰⁸ See Section 5.3 of the REFIT Platform joint group minutes of 20 September 2016. https://ec.europa.eu/info/law/law-making-process/evaluating-and-improving-existing-laws/refit-making-eu-law-simpler-and-less-costly/refit-platform/refit-platform-meetings_en

¹⁰⁹ Alemanno, A. (2015). How Much Better is Better Regulation? *European Journal of Risk Regulation*, (3), 1–24; Smismans, S. (2017). The Politicization of ex post Policy Evaluation in the EU. *European Journal of Law Reform*, 19(1–2), 74–96.

¹¹⁰ REFIT Platform opinion XXII.10.a “REFIT Platform Survey – Future prospects”, adopted on 14 March 2019: https://ec.europa.eu/info/files/refit-platform-recommendations-horizontal-issues-xxii10a-refit-platform-survey-future-prospects_en

¹¹¹ REFIT Platform opinion XXII.10.a “REFIT Platform Survey – Future prospects”, adopted on 14 March 2019: https://ec.europa.eu/info/files/refit-platform-recommendations-horizontal-issues-xxii10a-refit-platform-survey-future-prospects_en

The Task force on subsidiarity and proportionality recommended that the Commission's REFIT Platform be adapted to review legislation from the perspective of subsidiarity, proportionality, legislative density and the role of local and regional authorities. The Task force noted that the composition of the Platform might also need to change to include a greater presence from local and regional authorities. Stronger links to the work and networks of the Committee of the Regions could also be considered. The Commission echoed these views in its Communication on the principles of subsidiarity and proportionality published on 23 October 2018.

5.3. Communicating REFIT activities

The Commission's work programmes flag its key REFIT initiatives. The Commission has also begun to report annually on its efforts to simplify legislation^{112,113} and every year publishes online a REFIT Scoreboard¹¹⁴ that monitors simplification initiatives throughout their life cycle. The Scoreboard provides a comprehensive overview of the REFIT results achieved under each of the Juncker Commission's political priorities. The Commission's follow-up to the REFIT Platform opinion is explained in the Commission's annual work programme and in the follow –up report. To improve transparency, since July 2017 impact assessments have also included an annex detailing quantified estimates of costs and benefits.

Consultations have, however, raised various issues about the usefulness, and awareness of the REFIT Scoreboard in its current version. National authorities thought that the Scoreboard could not yet be considered truly user-friendly. They also asked for clear quantitative measurement of reductions in unnecessary costs and suggested that the REFIT Scoreboard could help monitor, visualise and communicate progress better than today. Following the European Court of Auditors recommendation for clarification of the REFIT concept¹¹⁵ the Commission has clarified in its annual burden survey the scope of REFIT and improved its internal and external communication to stakeholders.

Many Commission staff were of the opinion that the REFIT Scoreboard was burdensome because it requires constant updating. Officials who were interviewed suggested using more qualitative examples or case studies to illustrate impacts of legislation.

5.4. Considering alternative approaches to simplification and burden reduction

The (Competitiveness) Council has asked the Commission on several occasions to introduce a system of targets to tackle the perceived excessive burden of regulatory costs¹¹⁶ associated with European Union legislation. Paragraph 48 of the

¹¹² The European Union's efforts to simplify legislation - 2018 Annual Burden Survey: https://ec.europa.eu/info/sites/info/files/2018-annual-burden-survey_en.pdf

¹¹³ SWD(2017)675 Overview of the Union's efforts to simplify and reduce regulatory burdens: https://ec.europa.eu/info/sites/info/files/overview-union-efforts-to-simplify-and-to-reduce-regulatory-burdens_en.pdf

¹¹⁴ https://ec.europa.eu/info/law/law-making-process/evaluating-and-improving-existing-laws/refit-making-eu-law-simpler-and-less-costly_en#refit-scoreboard

¹¹⁵ Special report 16/2018 Ex-post review of EU legislation: a well-established system, but incomplete <https://www.eca.europa.eu/en/Pages/DocItem.aspx?did=46063>

¹¹⁶ Regulatory costs include all possible costs that are imposed on businesses, public authorities and individuals and which are linked to specific EU legislation (e.g. compliance costs for businesses, administrative costs linked to obligations to generate, collect and report information as well as

Interinstitutional Agreement on Better Law-Making¹¹⁷ also calls on the Commission to look at the feasibility of establishing objectives for burden reduction.

Box 7. Council's request for targets to reduce regulatory costs

- **Council conclusions of December 2014** (Doc 16000/14): *'...call on the Commission to develop and put in place - on the basis of input from Member States and stakeholders - reduction targets in particularly burdensome areas, especially for SMEs, within the REFIT Programme, which would not require baseline measurement and should consider at the same time the costs and benefits of regulation.'*
- **Council conclusions of 26 May 2016** on better regulation to strengthen competitiveness which *'urge the Commission to rapidly proceed on [...] the introduction of reduction targets in 2017, whilst always taking into account a high level of protection of consumers, health, the environment and employees and the importance of a fully functioning Single Market.'*
- **Council conclusions of 12 November 2018** ((Doc. 14137/18) on the European Court of Auditors' Special Report No 16/2018 "Ex-post review of EU legislation: a well-established system, but incomplete". *'...RECALLS the Council Conclusions of March 2018, which underline the importance of concrete targets for the reduction of unnecessary regulatory burdens, whilst respecting existing protection standards and without undermining the underlying objectives of the legislation.'*

The Commission has thus considered alternative approaches and explained its own approach in its Communication of October 2017¹¹⁸.

The Commission looks to simplify legislation on a case-by-case basis, using evidence gathered from evaluations and impact assessments and including consultation of stakeholders. To avoid adversely affecting underlying policy objectives and to ensure democratic accountability and transparency, it is essential that a political decision on which costs are legitimate to achieve policy goals and which instead should be eliminated is based on evidence from a case-to-case assessment that responds to the concerns of stakeholders and people. Up-front targets would not offer such fundamental guarantees and would present formidable methodological challenges at the European level. When revising legislation, the Commission thus investigates whether it can be simplified and any unnecessary costs removed. To provide a transparent measure of the impact of the proposed measures and a more easily verifiable objective, the Commission tries to quantify the reduction in regulatory costs implied by any such measure. However, this is not always possible due to data and methodological challenges. In addition, to preserve the meaningfulness of any quantitative objective to reduce burdens in proposed legislation, quantitative estimates need to be modified whenever needed due to co-legislators amendments and Member States transposition and implementation choices.

enforcement costs for public authorities. See tool #58 of the Commission's better regulation toolbox for more information: https://ec.europa.eu/info/sites/info/files/file_import/better-regulation-toolbox-58_en_0.pdf.

¹¹⁷ Interinstitutional agreement between the European Parliament, the Council of the European Union and the European Commission on Better Law-Making; L 123, 12 May 2016, p.1.

¹¹⁸ COM(2017) 651: *Completing the Better Regulation Agenda: Better solutions for better results*. https://ec.europa.eu/info/sites/info/files/completing-the-better-regulation-agenda-better-solutions-for-better-results_en.pdf

5.5. Results of simplification efforts

The current Commission has presented more than 150 new initiatives focused on simplifying legislation. As there is a diverse range of costs varying between the different initiatives, these quantification estimates cannot be added together to provide a single figure. In addition, the extent to which the Commission's simplification proposals actually deliver tangible benefits for regulated entities depends on the subsequent decisions of the European Parliament and the Council when legislating and Member States when transposing and implementing.

The Commission has reported annually on the results it has achieved. The following box extracts from these reports some illustrative examples.

Box 8. Examples of regulatory simplification entered into force in 2018.

Value added tax (VAT) for cross-border business to consumer e-commerce¹¹⁹). In 2017 the Commission introduced a one-stop shop by which traders that sell goods online to their customers can deal with their VAT obligations through one easy-to-use online portal. The online traders will no longer have to register for VAT in each of the Member States in which they sell goods. The Commission estimated that the one-stop shop will generate an overall saving of €2.3 billion for businesses and €7 billion increase in VAT revenues for Member States.

A single digital gateway to provide information, procedures, assistance and problem-solving services¹²⁰. In 2017 the Commission proposed a single digital gateway to ensure centralised access to EU citizens and businesses to information they need to exercise their EU rights. The gateway will integrate several networks and services from national and EU level. It will provide a user-friendly interface in all official EU languages. The single digital gateway could reduce by 60 % the 1.5 million hours that people currently spend researching online before going abroad and businesses could save between EUR 11 and EUR 55 billion annually.

Consumer protection cooperation¹²¹: In 2016 the Commission proposed to modernise cooperation mechanisms to reduce the harm caused to consumers by cross-border infringements. The regulation will ensure a swifter protection of consumers, saving time and resources for Member States and businesses. Thanks to additional cooperation powers, the authorities can act faster and save costs to jointly stop widespread online infringements. Businesses operating in all or a large majority of Member States will have the possibility to negotiate commitments at EU-level, which will make it simpler, faster and cheaper to resolve

¹¹⁹ COM(2016) 757 Proposal for a COUNCIL DIRECTIVE amending Directive 2006/112/EC and Directive 2009/132/EC as regards certain value added tax obligations for supplies of services and distance sales of goods <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM:2016:0757:FIN>

¹²⁰ COM(2017) 256 Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on establishing a single digital gateway to provide information, procedures, assistance and problem solving services and amending Regulation (EU) No 1024/2012 <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1554366292445&uri=CELEX:52017PC0256>

¹²¹ COM(2016) 283 Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on cooperation between national authorities responsible for the enforcement of consumer protection laws (Text with EEA relevance) <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1554366445313&uri=CELEX:52016PC0283>

consumer issues.

*European Structural and Investment Funds*¹²². The Commission proposed in 2016 a regulation with concrete simplification provisions to make the use of the Funds simpler for beneficiaries and authorities and financial rules more flexible. Overall, this means reducing the implementation costs of EU rules as well the number of errors contributing to optimise the impact of the Multi-annual Financial Framework 2014-2020.

Nearly a third of all respondents to the public consultation indicated their satisfaction with the Commission's efforts to simplify existing EU laws and reduce costs where possible¹²³. However, some 40% were not satisfied. Combined with the evidence presented above, this suggests that while the Commission's efforts to simplify and reduce unnecessary burdens have delivered results, these are neither well communicated nor generally regarded as sufficient. The changes introduced under this Commission have gone in the right direction but there is scope to do better.

It is worth considering how to speed up the adoption of simplification measures and increase their visibility. Improving quantification of costs and benefits in evaluations would also help. In principle, each evaluation should assess the extent to which policy objectives have been met and assess the economic efficiency of the policy. However, according to the literature¹²⁴, many evaluations do not generate sufficiently convincing evidence that policies are being delivered in the most effective and efficient manner. Assessing this in quantified terms is not always methodologically possible.

Finally, and perhaps more importantly, while regulatory costs are often justified for each individual piece of legislation, their combined impact can have undesired effects that deserve to be better addressed. The report of the 'Task force on subsidiarity and proportionality' pointed to the combined effects of legislation (including delegated acts and implementing acts) which may not be impact assessed or evaluated well enough. The task force recommends that the Commission's REFIT programme be adapted to review legislation from the perspective of subsidiarity, proportionality, legislative density and the role of local and regional authorities. Consideration on how to do this could also encompass an enhanced role for the REFIT Platform.

¹²² COM (2016) 605 Proposal for a Regulation of the European Parliament and of the Council on the financial rules applicable to the general budget of the Union and amending Regulation (EC) No 2012/2002, Regulations (EU) No 1296/2013, (EU) 1301/2013, (EU) No 1303/2013, EU No 1304/2013, (EU) No 1305/2013, (EU) No 1306/2013, (EU) No 1307/2013, (EU) No 1308/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, (EU) No 652/2014 of the European Parliament and of the Council and Decision No 541/2014/EU of the European Parliament and of the Council [https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1554366622511&uri=CELEX:52016PC0605\(01\)](https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1554366622511&uri=CELEX:52016PC0605(01)). The work of the High Level Group of Independent Experts on Monitoring Simplification for Beneficiaries of the European Structural and Investment Funds, set up by the Commission in July 2015, identified opportunities to strip cohesion policy rules of unnecessary complexity.

¹²³ Question 6 of the public consultation.

¹²⁴ For example, Golberg, E. (2018). "Better Regulation": European Union Style, (98); Delogu, B. (2016). Risk Analysis and Governance in EU Policy Making and Regulation. An Introductory Guide. Springer International Publishing Switzerland. <https://doi.org/10.1007/978-3-319-30822-7>

6. BETTER REGULATION AS A SHARED EFFORT

In May 2015, the Commission presented a comprehensive better regulation package, including a proposal for a new interinstitutional agreement on better regulation. The previous agreement on better law-making dated back to 2003, and was considered in need of revision, given the developments in the better regulation agenda. A new interinstitutional agreement also reflects recognition of the need for a renewed commitment on the part of all three institutions involved in the legislative process (the European Parliament, Council and Commission) in order for better law-making efforts to succeed. Following negotiations, the three institutions came to an agreement on the substance of the interinstitutional agreement on 8 December 2015. The new Interinstitutional Agreement on Better Law-Making was signed on 13 April 2016 and entered into force the same day.

The Interinstitutional Agreement stipulates that a political meeting is to be held annually to take stock of progress in implementing the Agreement¹²⁵. The first meeting took place in Strasbourg in December 2017 in the margins of the European Parliament's plenary session. Since then the three institutions have held regular discussions at technical level in the Interinstitutional Coordination Group chaired by the European Parliament. The Secretariat of the European Parliament prepared an overview on the implementation of the Agreement for the Parliament's Conference of Presidents in June 2017¹²⁶. The European Parliament adopted an own-initiative report on the interpretation and implementation of the Agreement¹²⁷. The Council has presented regular reports on the work it has undertaken to implement the Agreement¹²⁸. The Agreement contains a number of commitments and follow-up activities. Progress on each of these varies.

6.1. Joint Declaration on the EUs legislative priorities

In line with the Interinstitutional Agreement, in 2016 and 2017, the European Parliament, the Council and the European Commission agreed on two Joint Declarations on the EU's legislative priorities. They highlighted 89 initiatives for which priority treatment in the legislative process was needed. This represents a common commitment by the three institutions to ensure substantial progress and, where possible, delivery before the European elections in May 2019. The European Commission has adopted all the proposals announced in the Joint Declarations. Of these 69 have been agreed or formally adopted. 20 initiatives remain pending¹²⁹.

¹²⁵ Paragraph 50.

¹²⁶ Monitoring report on the Implementation of the Interinstitutional Agreement on Better Law-Making (IIA-BLM) Pursuant to the Decision of the Conference of Presidents of 9 June 2016; PE 605.832/CPG, 12 June 2017.

¹²⁷ Report A8-0170/2018 of 15 May 2018: <http://www.europarl.europa.eu/sides/getDoc.do?type=REPORT&reference=A8-2018-0170&language=EN>

¹²⁸ ST 14846 2018 INIT (30-11-2018); ST9895 2018 INIT (15-6-2018); ST 15084 2017 INIT (1-12-2017); ST 10006 2017 (12-6-2017); ST 15141 2016 COR 1 (8-12-2016).

¹²⁹ They include the proposals on the multi annual financial framework which is one item in the Joint Declaration but comprises 37 sectoral programmes as well as the general framework.

6.2. Delegated acts

“Omnibus” alignment proposal

Many Union legislative acts still allow the Commission to use the regulatory procedure with scrutiny to introduce measures to implement Union law. Under paragraph 27 of the Interinstitutional Agreement on Better Law-Making, the Commission presented a proposal on 14 December 2016 to align these provisions with the requirements of the Lisbon Treaty¹³⁰ on delegated acts and implementing acts. Discussions advanced slowly because of the technical nature of the proposal and diverging views of the European Parliament and the Council. The co-legislators managed to find agreement on the alignment of the empowerments in over 60 legislative acts, and the remaining acts will be revisited in the new parliamentary term.

Delineation criteria (to distinguish delegated acts from implementing acts)

In September 2017, the three institutions entered into negotiations under paragraph 28 of the Interinstitutional Agreement to establish non-binding criteria to improve the application of Articles 290 and 291 TFEU and to distinguish between the use of delegated acts and implementing acts. The European Parliament, Council and Commission reached agreement on the new criteria, and these are currently being endorsed in each institution. In practice, the choice of empowerment in legislative negotiations remains difficult because of political disagreements between the European Parliament and the Council. These difficulties may be eased with the growing awareness of the delineation criteria and other aspects of the Agreement.

Interinstitutional register for delegated acts

Under paragraph 29 of the Agreement, the three institutions established a joint register on delegated acts¹³¹ on 12 December 2017. It is a real success and has proved to be a useful tool to share information on delegated acts between the three institutions and the public.

6.3. Impact assessment

The Commission has committed to carry out impact assessments to support its legislative and non-legislative initiatives that have significant economic, environmental or social impacts¹³². This includes initiatives in the Commission work programme or in the joint declaration on annual interinstitutional programming. Not all legislative proposals require an impact assessment, because political discretion is limited or because the impacts are not significant (e.g. proposals to codify legislation)¹³³. When the Commission does not present an impact assessment, it explains why in the explanatory memorandum accompanying the proposal. See Section 2.1 for further details.

The European Parliament and the Council are committed to taking full account of the Commission's impact assessments¹³⁴. The co-legislators have also committed to assess

¹³⁰ COM(2016) 798 and COM(2016) 799.

¹³¹ <https://webgate.ec.europa.eu/regdel/#/home>

¹³² Paragraph 13.

¹³³ See tool #9 of the better regulation toolbox on When an impact assessment is necessary: https://ec.europa.eu/info/files/better-regulation-toolbox-9_en

¹³⁴ Paragraph 14.

the impacts of their substantial amendments where this is appropriate in a given legislative procedure. Each year the Council prepares a report on impact assessments and how the Council uses them in its work ¹³⁵. It has also established guidance for working party chairs on how to handle examination of the Commission's impact assessments. The General Secretariat of the Council indicates that the use of impact assessments is increasingly widespread in the Council and that in many areas they facilitate discussions and make it easier to reach political agreement. The impact assessment and the explanatory memorandum also provide basic information to assess conformity with the principles of subsidiarity and proportionality if challenges are made before the Court.

The Council has made less progress in conducting its own assessments of the impacts linked to its substantial amendments. In January 2018, it established a pilot programme to outsource such assessments to external consultants but no assessment has yet been made. Moreover, the Council prefers to ask the Commission first before considering undertaking its own assessment. There is also a natural tendency of the rotating presidency to avoid any risk of delay on a legislative file during its six-month tenure.

In contrast, the European Parliament has invested more heavily in creating its own expertise and capacity to assess substantial amendments. Since 2003, when the co-legislators first committed to make such assessments, the Parliament has made some 68 assessments. At the start of each legislative procedure, the European Parliament also routinely appraises the Commission's impact assessment against the requirements of the Commission's better regulation guidelines and the opinions of the Regulatory Scrutiny Board. The Parliament is also performing more retrospective evaluations of legislation that help inform its position on new Commission proposals.

6.4. 'Gold-plating' of national transposing legislation

The Agreement¹³⁶ calls on Member States to identify aspects of national law that are 'gold-plated'¹³⁷ and to inform the public. To facilitate transparency, the Commission has adapted its IT platforms to enable Member States to provide information about "gold-plating". Up until the end of 2018, there have been only three notifications from two Member States (add footnote with reference).

At the political stocktaking meeting in December 2017, the three institutions agreed to remind the Member States about the gold-plating provisions.

6.5. Other issues

There has been little or no tripartite discussion between the three institutions about the implementation of paragraphs 22 and 23 of the Agreement, which concern review clauses and the inclusion of monitoring and evaluation provisions in basic acts of Union law. The Commission has presented two annual burden surveys pursuant to paragraph 48 of the

¹³⁵ See for example, *Impact Assessment within the Council – 2018 annual report*: <https://data.consilium.europa.eu/doc/document/ST-8900-2018-INIT/en/pdf>

¹³⁶ Paragraph 43.

¹³⁷ National governments 'gold-plate' when they add new or more stringent obligations in national measures that transpose acts of Union law. Member States are free to do so (unless prohibited by the underlying legal basis in the Treaties), but those affected criticise the EU for this when it is a purely national decision.

Agreement, and these are discussed in the chapter 5 above on the Union's efforts to simplify legislation..

7. CONCLUSIONS

The costs of better regulation

The benefits of better regulation are clear. We wish to deliver high quality effective legislation through informed decision-making. However, there are also significant financial and human resource costs associated with operating an effective better regulation policy. There are clearly trade-offs of making further improvements in a world of limited resources. It is not possible to estimate the costs associated with the changes introduced in 2015, but one can estimate the absolute costs and resources involved in preparing impact assessments and evaluations in a typical year. We estimate that between 150 and 280 full-time equivalent staff are deployed on better regulation-related activities and supported by external contractors providing services amounting to between EUR 10 million to EUR 37 million annually¹³⁸.

Opening up policymaking

The progress made in consultation and in increasing transparency was widely acknowledged by stakeholders and the literature. Wider awareness and a wider range of opportunities to be involved, combined with better consultation documents and more satisfactory responses to stakeholders contributions, are the key avenues to further improve the Commission's public consultation mechanisms. However, any such effort would need to ensure sufficient resources are made available, including by better prioritising activities.

Utilising better tools for better policies

Impact assessment and evaluation

Solid reasons for granting exceptions will always exist, and unnecessary impact assessments should be avoided. There is, however, a clear demand for improved communication surrounding the reasons why an impact assessment may not be carried out. Improvements in the timely availability and public awareness of roadmaps would also make it easier to issue an early warning that an impact assessment is not to be carried out and enable stakeholders react. There is also scope to reflect on how must usefully communicate available evidence and analysis to stakeholders in cases where an impact assessment is not possible.

While individual stakeholders voiced a preference for more in-depth assessment of individual impacts, this has to be balanced against the overall breadth of the analysis and its proportionality in terms of resources. Measures to increase the readability of impact assessments would be welcomed. There is scope for procedural efficiency gains in the impact assessment process, more training and a more effective mobilisation of existing expertise. This confirms the need for well-resourced better regulation functions.

¹³⁸ See Annex I for details

Over the last few years, the Commission has made progress in improving evaluation. There is, however, scope and a need for further progress. To drive this, there has to be a greater use for evaluations by policy-makers and more favourable conditions for carrying out high-quality evaluations. Evaluations and impact assessments should be linked better so that the findings from one are used more effectively by the other. Evaluations could be used more in the decision-making processes in the Commission and by the co-legislators. The quality of evaluations depends heavily on whether information is available about how the legislation works.

Regulatory Scrutiny Board

The Regulatory Scrutiny Board is widely recognised as helping to improve the quality of impact assessments and evaluations. Its work could be better known by the public. Using the Board's expertise in early meetings on the design and methodology of evaluations and impact assessment is promising.

Keeping the existing stock of legislation fit for purpose

Stakeholders have mixed views on the Commission's efforts to simplify existing EU laws and reduce costs where possible. While the Commission's efforts to simplify and reduce unnecessary burdens have delivered results, these are neither well communicated nor generally regarded as sufficient. The changes introduced under this Commission have gone in the right direction but there is scope to do better. It will be important to reflect on the reasons why simplification has proven to be so complicated and burden reduction so burdensome.

Enhanced quantification, while welcome, would not directly lead to greater success, only easier communication. No fundamental reasons to change the Commission's views on the appropriateness of targets were identified by the stocktaking.

Advancing a common agenda with other EU institutions and Member States

The new Interinstitutional Agreement is still young. It has shown its usefulness and achieved some clear successes, notably for delegated acts. However, there is still much unexploited potential to improve the application of better regulation by the three institutions, particularly for monitoring and evaluation, assessing the impacts of more substantial amendments and transparency on 'gold-plating'.

Annex I

Better Regulation in the European Commission

1. THE ORIGINS OF BETTER REGULATION

The White Paper on European Governance from 2001¹³⁹ addressed how the Union uses the powers given to it by its citizens. It promoted greater openness, accountability and responsibility of all those involved in policymaking. The aim was to bring the Union closer to its citizens in order to make more effective and relevant policies. Those aspirations are just as relevant today as they were in 2001.

Box 1: Excerpt from Commission Communication COM(2002) 275 on Better Law-Making

There are a lot of complex issues at stake now in enacting good European legislation which is mindful of the principles of subsidiarity and proportionality. People nowadays take an interest in the effectiveness of the rules handed down "from Brussels" and the way they are drawn up. The advent of a democratic conscience is strengthening the need for accountability and proportionality in the way powers vested in the European institutions are exercised. This need is expressed more especially in transparency, clarity and the willingness to stand up to scrutiny. What we have here, then, is a veritable ethical requirement.

Following the consultation launched by the White Paper, the Commission published three Communications to promote better law-making. The first launched the impact assessment tool to improve the quality and coherence of the policymaking process¹⁴⁰. The second established principles and standards to promote a culture of dialogue and stakeholder participation¹⁴¹. The third presented an action plan to simplify and improve the regulatory environment¹⁴². These actions came into force in 2003 and together they form the basis of the better regulation policy in place today.

2. THE DIFFERENT ELEMENTS OF BETTER REGULATION

Better regulation is a framework to deliver evidence-based policymaking. It promotes transparency, accountability and informed decision-making. It is a key tool to deliver better European governance and to make sustainable development a mainstream part of the Union's policymaking under commitments made at the Göteborg European Council in 2001¹⁴³.

The Commission's approach incorporates the different steps of the policy lifecycle from inception and preparation to implementation, evaluation and subsequent modification.

¹³⁹ COM(2001) 428 final of 27 July 2001; "European Governance – A White Paper".

¹⁴⁰ COM(2002) 266 final of 5 June 2002; 'Impact Assessment'.

¹⁴¹ COM(2002) 704 final of 11 December 2002: 'Towards a reinforced culture of consultation and dialogue – general principles and minimum standards for consultation of interested parties' (published in draft form in June 2002 in COM(2002) 277 final).

¹⁴² COM(2002) 278 final of 5 June 2002; 'Action plan simplifying and improving the regulatory environment'.

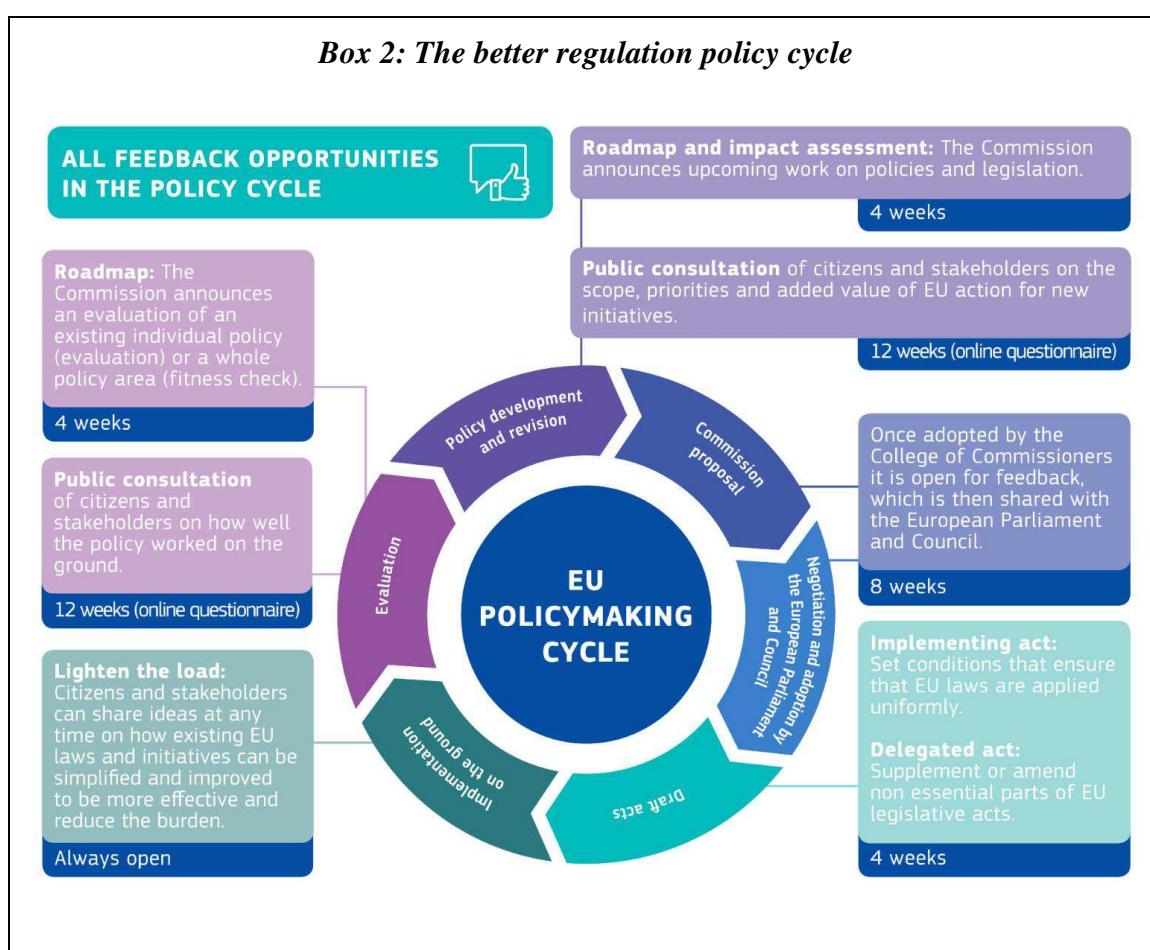
¹⁴³ Presidency Conclusions from the European Council, Göteborg 15-16 June 2001: http://ec.europa.eu/smart-regulation/impact/background/docs/goteborg_concl_en.pdf

Better regulation is built on three complementary and closely related pillars: the impact assessment, evaluation and stakeholder consultation. There are also a number of other elements described below.

Stakeholder consultation

Consultation allows stakeholders, including individuals, to express their views and for the Commission to gather evidence to help prepare its new initiatives¹⁴⁴ or evaluate existing policies. A consultation strategy accompanies each initiative. This identifies the information that the Commission would like to obtain, and the activities and methods the Commission will deploy to obtain that information.

The initial description of the initiative and the consultation strategy are usually published in a roadmap or inception impact assessment. This allows all stakeholders to comment at an early stage and to prepare themselves for the more detailed consultation activities that follow.



The evaluation and impact assessment depend on a good quality stakeholder consultation. A web-based public consultation lasting 12 weeks generally accompanies each impact assessment and evaluation. For major initiatives in the Commission’s work programme, the Commission aims to consult in all official languages and at least in

¹⁴⁴ Article 2 of Protocol No. 2 TEU/TFEU obliges the Commission to consult widely before proposing legislative acts and these consultations should take into account the local and regional dimensions of the envisaged action where appropriate.

English, French and German in other cases. Additionally, Commission staff will carry out targeted consultations using interviews, workshops, conferences, focus groups, etc. as described in the consultation strategy.

The impact assessment

The impact assessment looks at a range of policy solutions that could address an identified problem and its underlying causes. It helps to ensure observance of the Treaty principles of subsidiarity, proportionality and sustainable development and ensure that the most relevant and important impacts are identified and assessed. An impact assessment should also provide information about the views of different stakeholders. Lastly, an impact assessment should make the link to a future evaluation by identifying the benchmarks and procedure for monitoring the practical implementation of the legislation, policy or programme.

Evaluation

Evaluations look back to see how the policy has worked¹⁴⁵. When available, they use the earlier impact assessment to compare the actual and expected outcomes. Evaluation provides important information about potential problems that occur in policy implementation. A future impact assessment might address these in connection with a subsequent revision of the policy. In some cases, an evaluation may conclude that the legislation is no longer needed or that no changes are required. Good evaluations need timely information about how a policy performs. Therefore, an appropriate monitoring framework is essential, but this is not always available. This can occur, for example, when no arrangements have been put in place to collect the necessary information or when the Commission is legally obliged to evaluate the legislation before sufficient practical experience has been accumulated.

The Commission's better regulation agenda is based on the 'evaluate first' principle. Before introducing new legislation, the Commission has committed to evaluate what already exists, providing robust and objective evidence to feed decisions as to whether EU action should continue as is, be changed or even stop. These evaluations can be of individual pieces of legislation or of several acts covering a particular sector or issue ('fitness checks'). In 2016, evaluations were carried out for about half of the impact assessments. In 2017 this figure rose to over 70% and in 2018 reached 78%.

REFIT

The concept of regulatory fitness ('REFIT') is at the heart of better regulation. It focuses on ensuring that new and existing legislation achieves its objectives in the most efficient manner and that existing legislation delivers as expected, does not impose unnecessary regulatory costs and is as simple as possible. Evaluations help ensure that Union legislation remains fit for purpose.

¹⁴⁵ The Commission uses five standard criteria: (1) Effectiveness (the extent to which policy objectives are met); (2) Efficiency (the costs of delivering the intended benefits); (3) Coherence (within the policy instrument and with other policies); (4) Relevance (ongoing need for the legislation); (5) EU added value (beyond what might have been expected without EU intervention).

The REFIT Platform

The REFIT Platform was set up by the May 2015 Better Regulation Communication¹⁴⁶ to advise the Commission on how to make EU regulation more efficient and effective while reducing unnecessary costs (without undermining policy objectives).

The Platform consists of two groups:

- A stakeholder group, with 18 members representing business (including SMEs), civil society organisations and social partners with direct experience in applying Union legislation. The group also includes two representatives from the European Economic and Social Committee and the Committee of the Regions.
- A government group, with one high-level expert from each of the Member States.

Platform members consider suggestions by various parts of civil society. (either online via ‘*Lighten the Load*’ web site or through other means), on the potential to reduce regulatory and administrative burden. On this basis, the REFIT Platform adopts opinions recommending practical follow-up to the Commission.

The Commission is committed to respond to all opinions, indicating whether action is necessary or appropriate, the type of action envisaged and its timing. The Commission presents information on the follow-up to the Platform opinions in its work programmes¹⁴⁷ and in the REFIT Scoreboard¹⁴⁸.

Better regulation guidelines and toolbox

The Commission has developed and published guidelines that direct Commission staff on how to apply better regulation in their work. These capture all phases of the policy cycle, including planning, impact assessment, preparing proposals, implementation and transposition, monitoring, evaluation and stakeholder consultation. They also address how the Commission will assist Member States in their national implementation of Union legislation. The toolbox contains 65 separate tools. They each provide detailed assistance on how to tackle specific issues such as subsidiarity and proportionality¹⁴⁹.

Stakeholder participation: ‘Have Your Say’ web site (the Better Regulation Portal)¹⁵⁰

The Commission launched a web-based portal (‘*Have Your Say*’) in 2016, and its functionality has improved progressively. Stakeholders are able to provide feedback on policy preparation and implementation throughout the policy cycle. Via the ‘*Have Your Say*’ website, stakeholders are able to:

- provide comments on Commission roadmaps and inception impact assessments which are published at the very outset of a new initiative (during a period of 4 weeks);

¹⁴⁶ COM(2015)215: Better regulation for better results - An EU agenda: <https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX:52015DC0215>

¹⁴⁷ https://ec.europa.eu/info/publications/european-commission-work-programme_en

¹⁴⁸ <http://publications.europa.eu/webpub/com/refit-scoreboard/en/index.html>

¹⁴⁹ https://ec.europa.eu/info/files/better-regulation-toolbox-5_en

¹⁵⁰ https://ec.europa.eu/info/law/contribute-law-making_en

- participate in public consultations for new initiatives or evaluations of existing legislation or policies (generally during a 12-week period);
- provide comments on proposals adopted by the Commission (during a period of 8 weeks following adoption). These will be compiled by the Commission and forwarded to the European Parliament and the Council;
- provide comments on the legal texts of draft delegated acts and implementing acts before finalisation by the Commission (during a period of 4 weeks); and
- provide comments and suggestions about how to simplify specific legislation and reduce unnecessary regulatory costs. These suggestions are then taken up by the REFIT Platform, which may adopt opinions and recommendations to the Commission.

All stakeholders are able to participate in such activities and can request automatic notification when new documents are uploaded to the portal website. Stakeholders can also submit views and other evidence to the Commission outside of the formal consultation and feedback processes. In particular, the European Citizens' Initiative¹⁵¹ complements the participation opportunities mentioned above.

Regulatory Scrutiny Board

The President of the Commission established a new Regulatory Scrutiny Board¹⁵² in May 2015. The Board is comprised of a chairperson and six members. They all work full-time for the Board and do not have any responsibility for policymaking. All serve for a period of 3 years. Three of the members were recruited from outside of the European institutions, while the remaining four come from within the Commission services. The Board checks the quality of all impact assessments and selected evaluations against the requirements of the Commission's better regulation guidelines. It issues opinions and recommendations for improvement. Initiatives accompanied by an impact assessment will generally require a positive opinion from the Board for the file to proceed to the College of Commissioners for decision.

These represent significant changes compared to the previous Impact Assessment Board where a pool of senior managers worked part-time for the Board but retained their policy responsibilities. The previous Impact Assessment Board did not scrutinise evaluations.

Interinstitutional agreement on better law-making

Following the Commission's proposal in 2015, an interinstitutional agreement on better law-making entered into force in April 2016¹⁵³. It sets out the commitments of the European Parliament, the Council and the Commission on many aspects regarding the preparation and implementation of Union legislation. These include the performance of an impact assessment of proposals and substantial amendments, monitoring and evaluation, the preparation of delegated acts and regulatory simplification. The 2016

¹⁵¹ <http://ec.europa.eu/citizens-initiative/public/welcome?lg=en>

¹⁵² https://ec.europa.eu/info/law/law-making-process/regulatory-scrutiny-board_en

¹⁵³ <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ:L:2016:123:TOC>

Agreement replaces the previous agreement concluded in 2003 and the institutions' 2005 common accord on impact assessment¹⁵⁴.

Better regulation training courses

In 2016-2017, the Commission overhauled its training courses on better regulation. The objective was to promote awareness of the better regulation tools and principles across the Commission and ensure that officials who carry out impact assessments and evaluations are sufficiently well equipped and knowledgeable to enable them to produce high-quality, evidence-based reports. Better regulation training courses are now available in the interinstitutional catalogue on EU Learn, meaning that any Commission official can easily find and register for any of the courses. Additionally, the courses are open to officials from the European Parliament and the Council.

The revised approach to training on better regulation depicted below has three tiers (see figure below):

- an introductory course composed of an e-learning and a class-based module;
- one course for each of the better regulation ‘pillars’ (planning & validation, evaluation, impact assessment and stakeholder consultation);
- advanced courses on specific issues noted as recurring weaknesses in the opinions of the Regulatory Scrutiny Board (e.g. on quantification methods, intervention logic, problem definition in impact assessments and subsidiarity).

Additionally, the Secretariat-General organises regular meetings and exchanges of good practices with the networks of desk officers responsible for impact assessments, evaluations, stakeholder consultation and REFIT in the directorates-general.

Other activities with other institutions and bodies

In the period covered by the stocktaking, the Secretariat-General represented the Commission in 21 meetings of the Council’s Working Party on Competitiveness and Growth (better regulation). Each rotating presidency also tends to organise a meeting of representatives from the national ministries responsible for better regulation which the Commission also attends (Directors for better regulation). In addition, the Secretariat-General also represents the Commission at the Regulatory Policy Committee meetings of the OECD (typically twice a year).

Cost of operating a better regulation policy

It is estimated that between 150 and 280 full-time equivalent staff are deployed on better regulation-related activities and supported by external contractors providing services amounting to between EUR 10 million to EUR 37 million annually.

<i>Impact assessments and evaluations each year*</i>	<i>Full-time equivalent staff per year per file</i>	<i>Total full-time equivalent staff</i>
60 impact assessments	1.0 – 2.0	60 - 120

¹⁵⁴ http://ec.europa.eu/smart-regulation/impact/key_docs/docs/ii_common_approach_to_ia_en.pdf

70 evaluations	1.0 – 2.0	70 - 140
----------------	-----------	----------

**These estimates include officials working on the specific file and in their better regulation support units in the lead Commission department and officials participating in interservice groups and the Secretariat-General. An impact assessment or evaluation typically takes between 0.5 to 1.5 years to complete.*

<i>Impact assessments and evaluations each year</i>	<i>Fraction with supporting study</i>	<i>Cost of supporting study</i>	<i>Total cost</i>
60 impact assessments	50%	EUR 150 000 – 300 000	EUR 4.5 m – 9.0 m
70 evaluations*	80%	EUR 100 000 – 500 000	EUR 5.6 m – 28 m

** Studies supporting the evaluation of regulatory measures are typically in the range of EUR 100 000 to EUR 500 000. This excludes cross cutting studies supporting the evaluation of major expenditures like Horizon 2020, which are undertaken at a 4 year interval.*

There are also staff costs associated with operating the Regulatory Scrutiny Board with its seven full-time senior officials. A full-time secretariat serves the Board and consists of approximately 10 to 15 full-time (equivalent) members of staff. A further 3 full-time staff provide a secretariat to the REFIT Platform, and the Commission meets the expenses of the Platform meetings and the participants' expenses.

The 'Have Your Say' web portal cost approximately EUR 3 million to create between 2015 and 2018.

Annex II

Overview of consultation activities

1. OVERVIEW OF CONSULTATION ACTIVITIES

The aim of the consultation was to assess how well the various better regulation procedures and bodies used by the Commission are working in practice and to what extent they contribute to achieving its better regulation policy objectives. The focus of the exercise was on the changes made by the Commission since May 2015.

Public consultation

On 17 July 2018, the European Commission launched an online public consultation entitled *Stocktaking of the Commission's 'better regulation' approach*. The public consultation was available in 23 EU languages and closed on 23 October 2018. The Commission undertook communication campaigns, including via social media, in all EU languages to raise awareness of the consultation.

The public consultation was structured around the following themes:

- (1) General questions: The Commission and better regulation
- (2) Stakeholder consultation: Consulting the public and interested parties
- (3) Evaluation and REFIT: Evaluating existing EU laws
- (4) Impact assessments: Assessing new Commission proposals
- (5) Regulatory scrutiny: Scrutinising the quality of impact assessments and evaluations
- (6) Final questions on progress in the past and future.

The Commission received 626 responses to the public consultation. After applying the rules for moderating feedback and suggestions, 596 contributions remained. Of those, 433 (63%) came from individuals in their private capacity and 163 (27%) from professionals (businesses, NGOs, think tanks, research, academia, consultants, public and regional authorities) replying on behalf of an organisation. Respondents to the public consultation came from 15 Member States.

Stakeholders submitted 42 position papers during the public consultation. Of these, 16 were not considered because they (a) duplicated another position paper in a different language; (b) promoted a commercial product or service; (c) duplicated a submission to the Taskforce on Subsidiarity; or (d) did not relate to the Commission's better regulation agenda.

Targeted consultation

In addition, there was a targeted consultation of the officials of the European Parliament, the Council, the Committee of the Regions (CoR), the European Economic and Social Committee (EESC). Member States were consulted via the Council Working Party on

Competitiveness and Growth (COMPCRO). Additionally, 5 Member States (Estonia, Germany, Ireland, Poland and Spain) sent in contributions after a discussion in the Council's Working Group on Competitiveness and Growth (COMPCRO). Some Member States also contributed to the public consultation.

There were 244 Commission officials who were interviewed. These interviews targeted officials who had written an evaluation and/or impact assessment. Officials responsible for better regulation in the Commission discussed the results of all consultation activities at a dedicated workshop on 18 January 2019 with approximately 80 participants.

In parallel, the REFIT Platform launched its own survey of its members on whether the Platform had served its purpose and had contributed to the Commission's better regulation agenda. The Platform circulated the survey on 2 July 2018 and received 34 contributions (20 from members of the government group and 14 from the stakeholders' group). It delivered its opinion on 14 March 2019¹⁵⁵

Feedback on the roadmap

The Commission published the roadmap¹⁵⁶ for the stocktaking exercise on the 'Have Your Say' web portal for stakeholder engagement. During the four-week feedback period, 6 replies were received through the portal and 1 by email. These contributions are published on the web alongside the roadmap.

Two anonymous individuals asked questions and made suggestions about the stocktaking process. For example, one individual suggested extending the scope of the exercise to the co-legislators and proposed involving independent experts to make the results more credible. The other individual wondered whether it was the right time to take stock. According to this person, it would be desirable to study the effects on the quality of legislation but it might be too early to see any at this stage.

The submissions from associations (Association of German Chambers of Industry and Commerce, the European Crop Protection Association and the German Confederation of Skilled Crafts and from the Maltese national authorities offered a preview of the contributions they sent in response to the public consultation and which are described in detail below. Overall, they welcomed the visible progress made with the Commission's better regulation policy and offered suggestions on how to improve it further.

2. OECD REGULATORY POLICY OUTLOOK 2018

Every 3 years, the OECD publishes a comparative assessment of member countries' better regulation systems. The purpose of the OECD report is to track and measure the progress of OECD countries (and the progress of the European Commission) in their regulatory practices and their implementation of the OECD's 2012 recommendations for regulatory policy¹⁵⁷. The 2018 outlook reflects the situation at the end of 2017¹⁵⁸.

¹⁵⁵ REFIT Platform opinion XXII.10.a "REFIT Platform Survey – Future prospects", adopted on 14 March 2019: https://ec.europa.eu/info/files/refit-platform-recommendations-horizontal-issues-xxii10a-refit-platform-survey-future-prospects_en

¹⁵⁶ https://ec.europa.eu/info/law/better-regulation/initiatives/ares-2018-2332204_en

¹⁵⁷ <http://www.oecd.org/gov/regulatory-policy/2012-recommendation.htm>

The OECD's assessment focuses on three dimensions of regulatory policy practices, namely stakeholder engagement, the impact assessment and ex post evaluations. For each of these dimensions, the study assigns scores for the methodology, oversight and quality control, the systematic use and transparency. The report applies a methodology of composite indicators constructed using self-reported data, which is quality checked by the OECD.

With the 2018 outlook, it is possible to measure the improvements made under the Juncker Commission that include the May 2015 reforms and subsequent adjustments made in the summer of 2017. Already before these reforms, back in 2014, the EU (European Commission) was performing well in the three dimensions analysed: stakeholder engagement, the impact assessment and ex post evaluations. The Commission was a strong performer for the impact assessment and evaluations, but still had the potential to improve on stakeholder consultation.

The 2018 report shows that the Commission's 2015 reforms have brought significant improvements. The Commission is now ranked first in the OECD for stakeholder engagement, a reflection of the Commission's introduction of feedback mechanisms for roadmaps, inception impact assessments, adopted proposals, draft delegated acts and implementing acts and public consultations accompanying impact assessments and evaluations.

On impact assessments, the Commission further refined and improved its policy and kept the third-placed ranking it had already achieved in 2014. The Commission has further improved its approach on evaluations and has improved its ranking to third place.

Overall, the Commission's regulatory policy now ranks among the very best in the OECD with no other country or associated country scoring higher across the three dimensions of better regulation.

3. LITERATURE REVIEW

The Directorate-General Joint Research Centre undertook a review of the academic literature to support the current stocktaking exercise and has published the results¹⁵⁹. Looking at better regulation generally and at the specific tools used by the Commission, the Joint Research Centre focused on peer-reviewed and grey literature published since 2015. The results have been incorporated in the preceding sections and a short summary of the main findings is presented below.

The literature review looked at more than 100 papers. These covered many different issues, given the different interpretations of better regulation. It is difficult to draw overarching conclusions because relatively little time has elapsed since the Commission introduced major changes in 2015.

Generally, the literature welcomes the Commission's stronger commitment to evidence-based policymaking and the guidance it has provided in the better regulation guidelines

¹⁵⁸ <http://www.oecd.org/governance/oecd-regulatory-policy-outlook-2018-9789264303072-en.htm>

¹⁵⁹ Listorti G., Basyte Ferrari E., Acs S., Munda G., Rosenbaum E., Paruolo P., Smits P. (2019). *The debate on the EU Better Regulation Agenda: a literature review*, EUR, Publications Office of the European Union, Luxembourg, 2019, ISBN 978-92-76-00840-8, doi:10. 2760/46617, JRC116035

and toolbox. The literature highlights the all-encompassing approach taken by the Commission in covering the whole policy cycle. However, the review notes that this guidance still leaves room for discretion on how to carry out analyses (especially the quantification of impacts) that adversely affect objectivity. More (standardised) guidance and support as well as improved in-house expertise and external peer review have been suggested to increase the quality and objectiveness of impact assessments and evaluations. In this respect, the review also highlights the value of the ‘evaluate first’ principle and the need for impact assessments to build better upon each other, particularly in terms of planning/scheduling.

The review highlights several criticisms. Evidence-based policymaking is undermined when proposals are not supported by an impact assessment. Impact assessments often seem to justify a predetermined policy option. In this context, authors also called for more transparency by publishing underlying data and studies as well as draft reports. Additionally, there were concerns about how the EU’s overarching objectives, as enshrined in the treaties, are taken into account in the assessments.

Regarding public consultations, the literature welcomes the significantly increased opportunities for participating in EU policymaking. However, some authors questioned whether the quality of the feedback received justified the high workload for participants and the Commission. There is a perceived lack of transparency on how the Commission uses consultation responses. Moreover, authors questioned whether the questionnaires succeed in collecting evidence from people who would otherwise not be involved.

The review noted that the REFIT Platform was seen as focusing too narrowly on cost reduction rather than cost-efficiency (cost per unit benefit). Furthermore, there were concerns that the Platform does not exclude political considerations and that it may support a deregulation agenda.

On the Regulatory Scrutiny Board, the review recorded proposals to expand its scope and activities: first, intervene earlier in the preparatory processes; second, become more independent; third, consolidate its expertise in a variety of policy fields. Some contributions regretted that the Board is only an in-house body, also meaning that the public and stakeholders cannot hold the Commission (judicially) accountable to its better regulation principles.

Some authors saw the Interinstitutional Agreement on Better Law-Making as an essential part of better regulation but regretted that it remains only partially implemented. Others viewed it as an attempt by the Commission to wield greater influence over policymaking and/or to share the blame with the co-legislators for poor quality legislation.

4. PUBLIC CONSULTATION

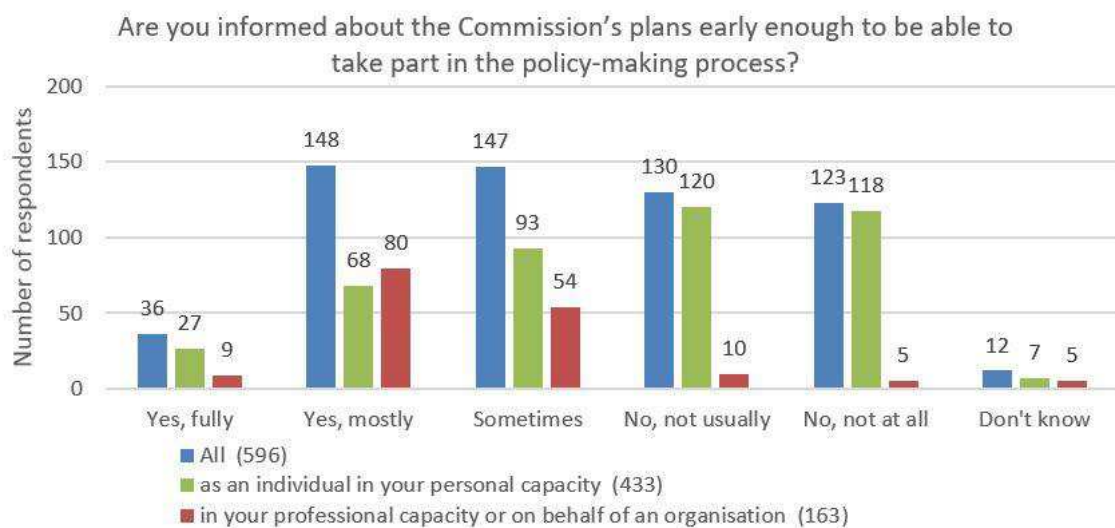
This section presents the overall results per question, as well as a breakdown of replies according to the type of respondent (i.e. individuals, professionals) in order to make the views of the different stakeholder groups more visible.

4.1. General questions: The Commission and better regulation

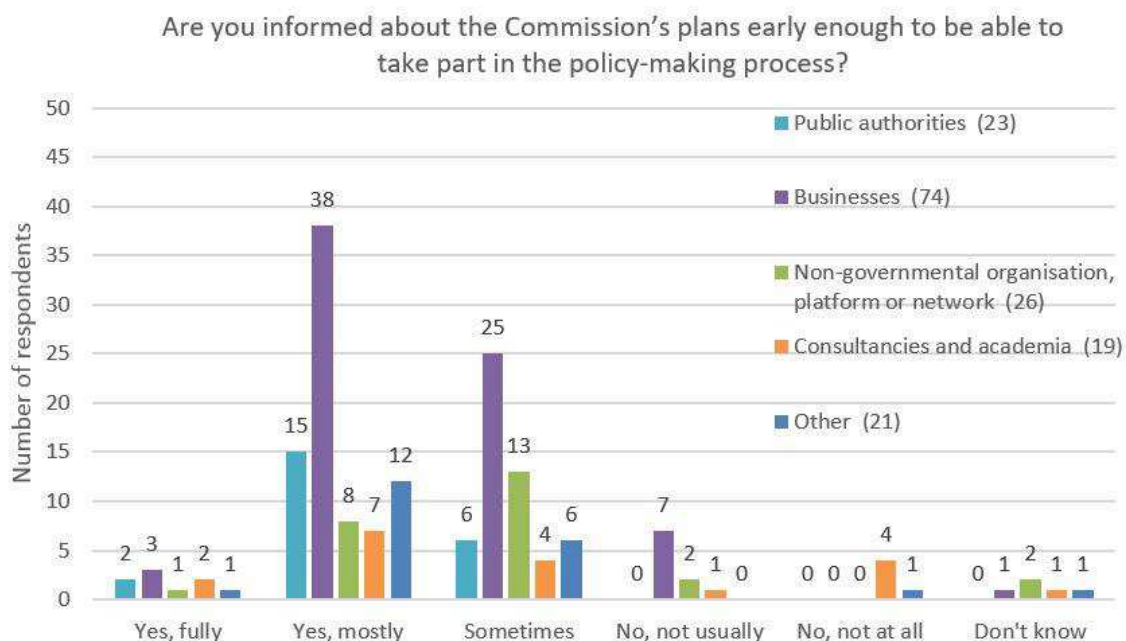
Q1. Are you informed about the Commission’s plans early enough to be able to take part in the policymaking process?

Out of 596 respondents, 184 (31%) agree that that they are fully or mostly informed early enough to take part in the Commission’s policymaking process; whereas 147 (25%) of the 596 respondents argue that this is sometimes the case, and 253 respondents (42.4%) said they were not informed early enough.

Public authorities and businesses said most frequently that they are fully or mostly informed early enough in the process (41 out of 74 and 17 out of 23; 55.4% and 73.9% respectively). In contrast, the majority of the individuals (238 out of 433, 55.0%) responded that they are not usually or not at all informed early enough.

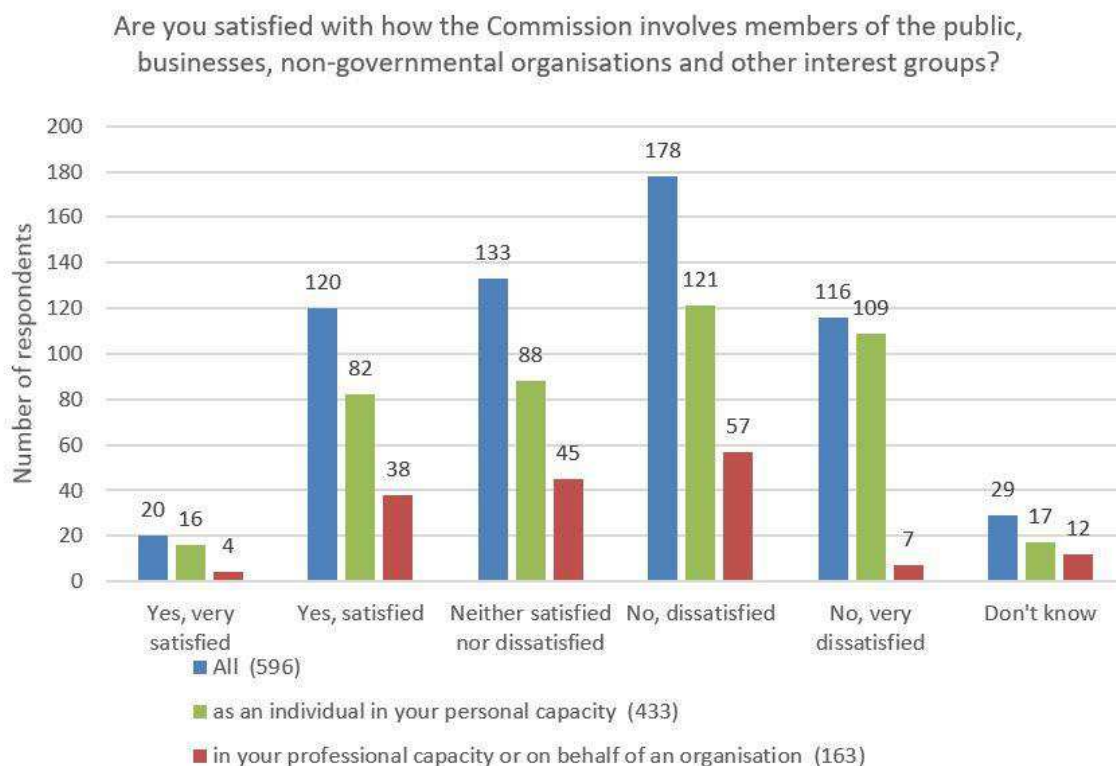


Breakdown of answers given in a professional capacity:



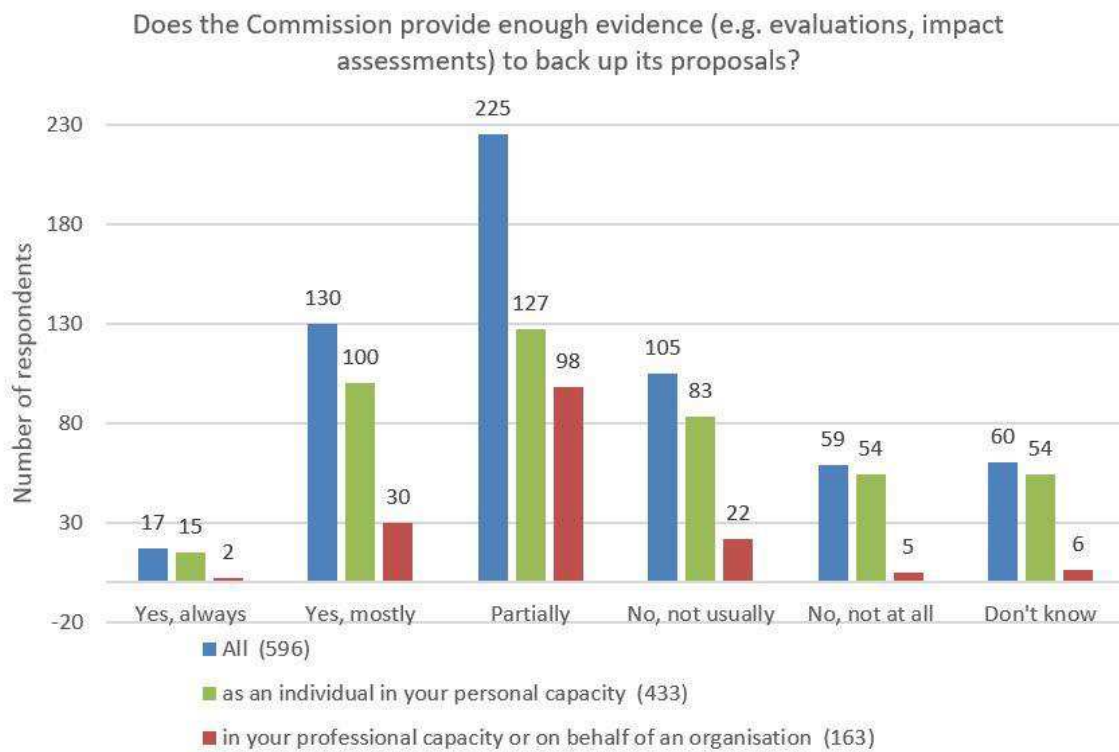
Q2. Are you satisfied with how the Commission involves members of the public, businesses, non-governmental organisations and other interest groups?

Approximately half of the individual respondents (53%) are dissatisfied or very dissatisfied with the way that the Commission involves members of the public, businesses, non-governmental organisations and other interest groups. Out of 163 professionals, 64 (39%) are of the same view. Hence, individuals have a more negative opinion than professionals.



Q3. Does the Commission provide enough evidence (e.g. evaluations, impact assessments) to back up its proposals?

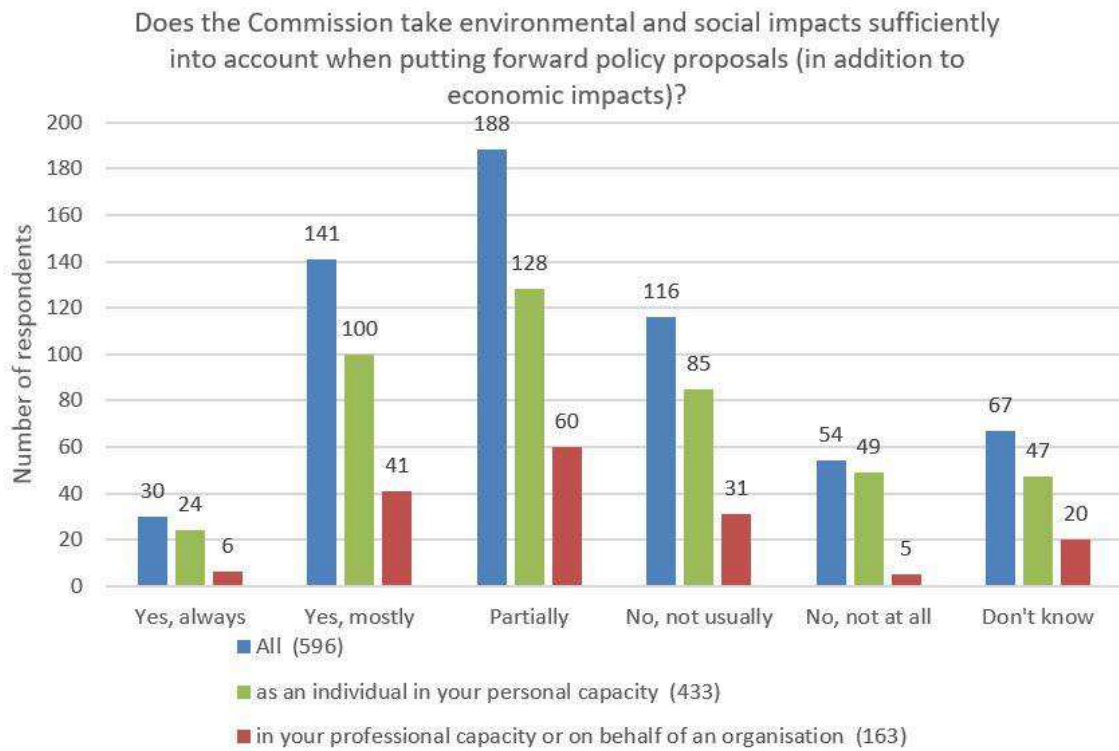
The opinions whether the Commission proposals are backed by enough evidence are divided. 147 respondents (24.7%) indicated that there was enough evidence, while 164 (27.5%) said that there was not. The largest group, 225 respondents (37.8%), found that the proposals were partially well backed by evidence.



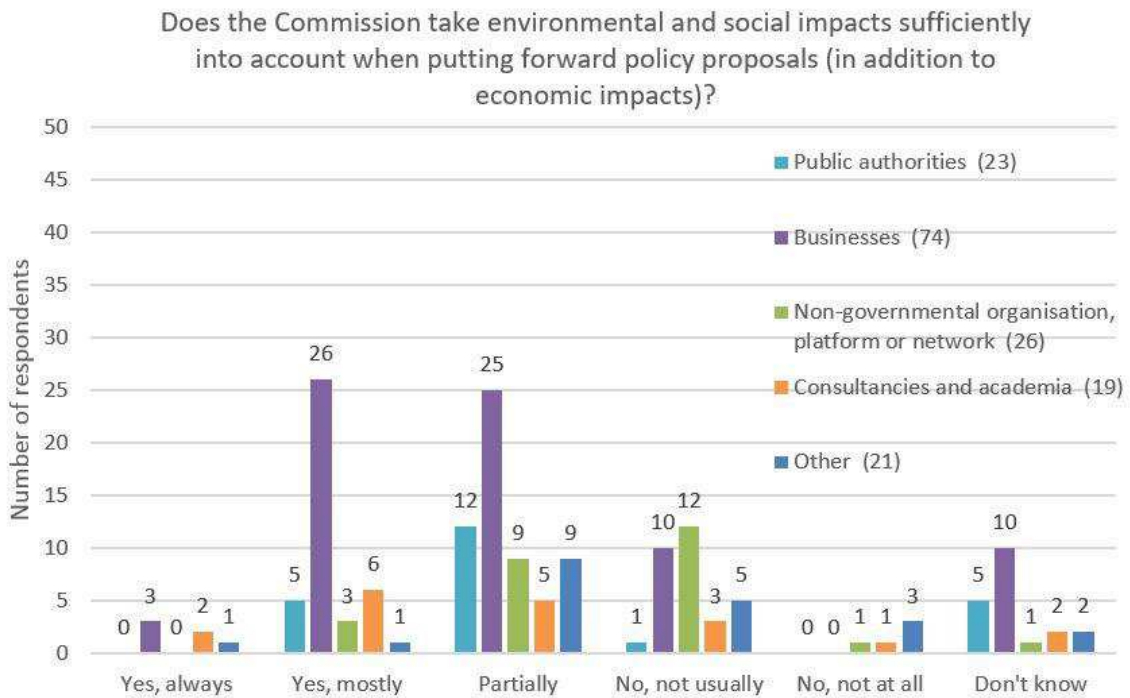
Q4. Does the Commission take environmental and social impacts sufficiently into account when putting forward policy proposals (in addition to economic impacts)?

Respondents agreed almost equally that the Commission did or did not consider environmental and social impacts sufficiently. Out of 596 respondents, 171 (28.7%) thought those impacts received sufficient attention, while 170 (28.5%) did not. The largest group of respondents (188 out of 596, 31.5%) thought that the Commission considers environmental and social impacts partially.

Among professionals, non-governmental organisations tended to think that social and environmental impacts are not sufficiently considered, while businesses tended to be of the opposite view. Public authorities hold the middle.

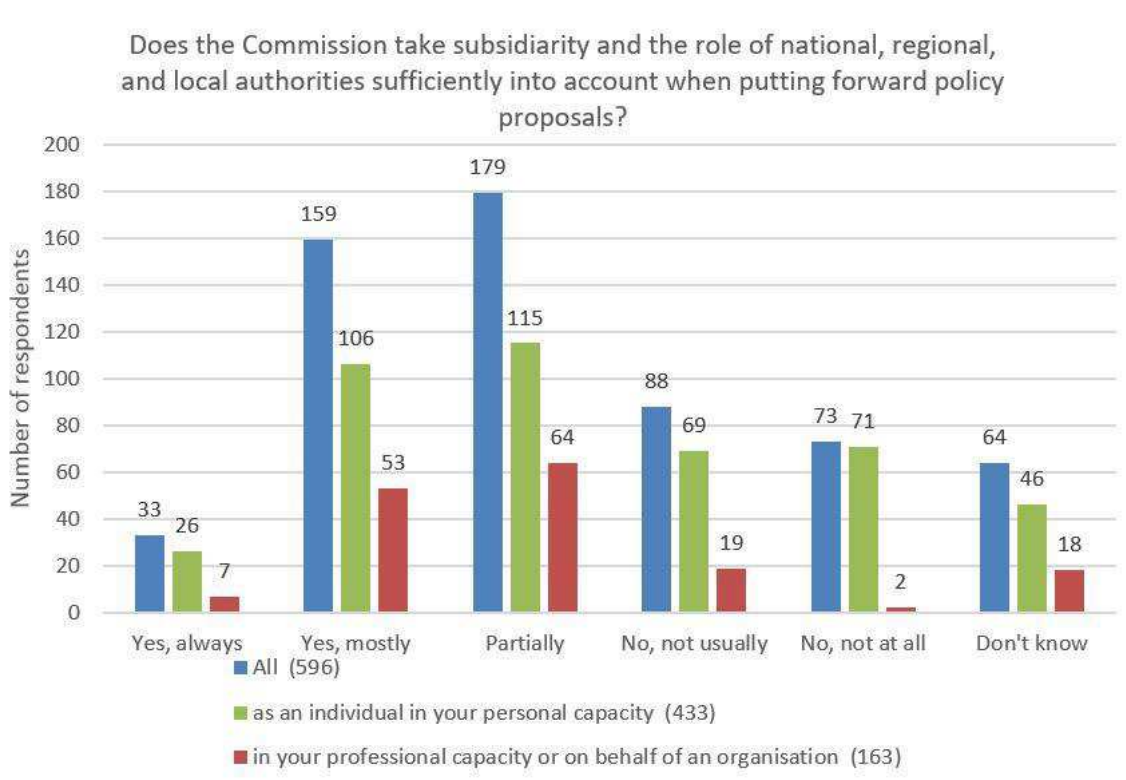


Breakdown of answers given in a professional capacity:



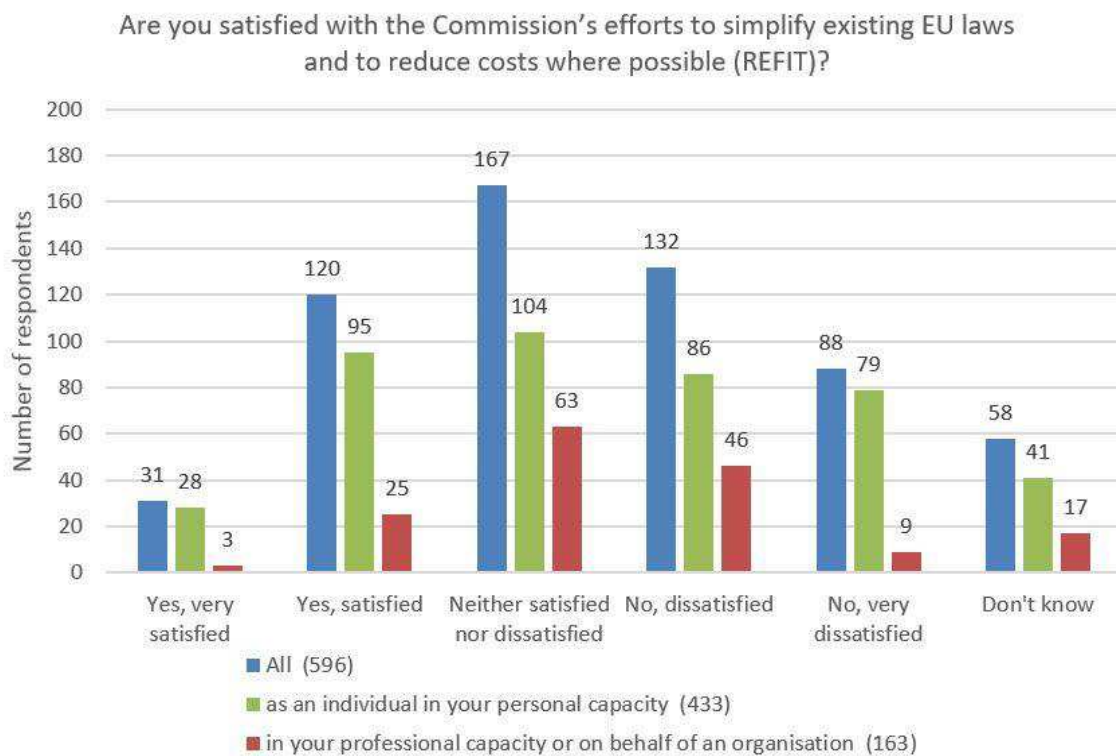
Q5. Does the Commission take subsidiarity and the role of national, regional, and local authorities sufficiently into account when putting forward policy proposals?

More respondents agreed (192 out of 596, 32.2%) than disagreed (161, 27.0%) that the Commission takes subsidiarity and the role of national, regional, and local authorities sufficiently into account. A group of approximately the same size as the previous two (179, 30.3%) thought that the Commission only does so partially.



Q6. Are you satisfied with the Commission's efforts to simplify existing EU laws and to reduce costs where possible (REFIT)?

Out of 538 respondents, 151 (28%) were satisfied or very satisfied with the Commission's efforts to simplify existing EU laws and reduce costs where possible, while 220 (40%) were not. The remaining 167 respondents (28%) were partially satisfied with the Commission's efforts.

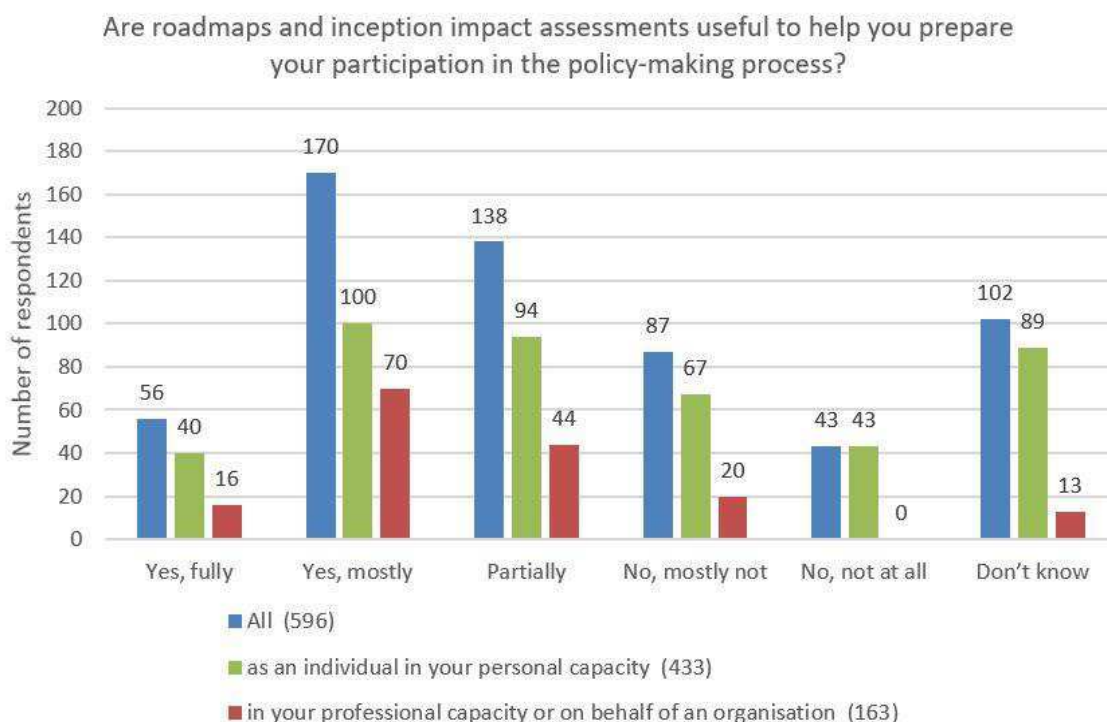


4.2. Public consultations: Consulting the public and interested parties

Q7. Are roadmaps and inception impact assessments useful to help you prepare your participation in the policymaking process?

Approximately 20% (102 of 556) of all respondents are not familiar with roadmaps and inception impact assessments. Of those who said they were familiar with them, approximately half (226 out of 494, 45.7%) find roadmaps and inception impact assessments entirely or mostly useful for preparing their participation in the policymaking process.

More than half the professionals thought that the roadmaps and inception impact assessments were (very) helpful, while another quarter deemed them partially helpful. Individual respondents were less positive.



Q8. Are you satisfied with the following opportunities to contribute to the policymaking process?

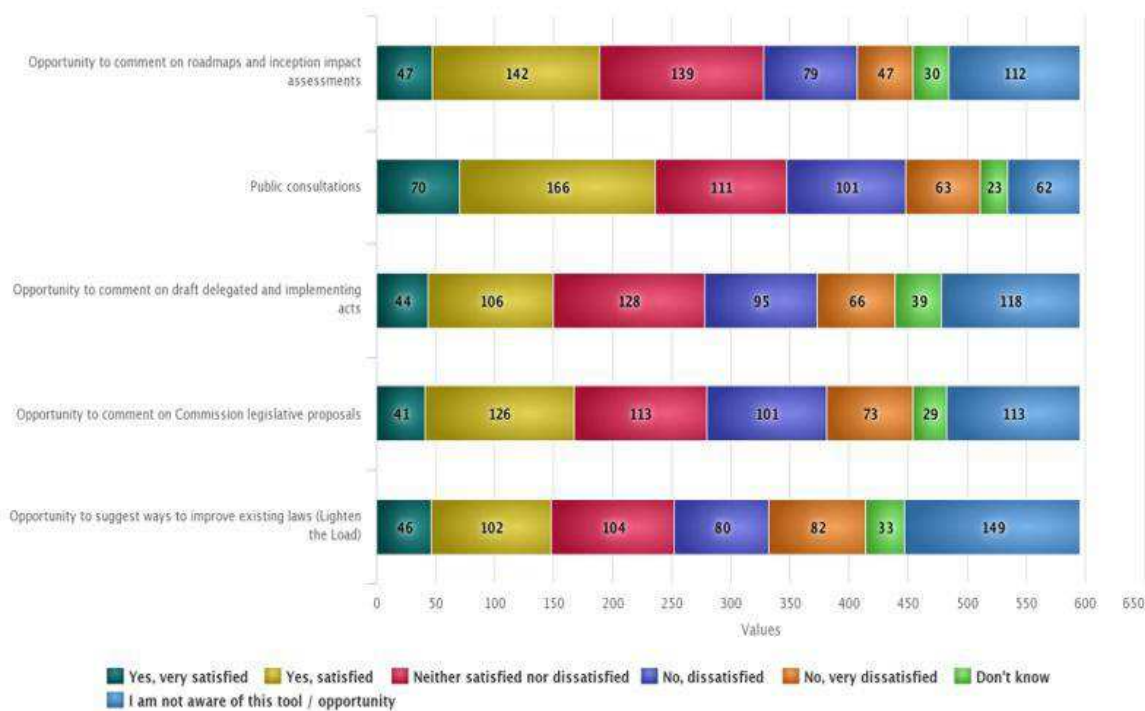
With the exception of public consultations, a significant number of respondents (from 18.8% to 25% depending on the opportunity) was not aware of the various opportunities to contribute to policymaking.

The proportion of respondents who are satisfied with the opportunities to give feedback to inception impact assessments and roadmaps and take part in public consultations (31.7% and 40.0% respectively) is higher than the proportion of those who are dissatisfied (21.1% and 27.5% respectively). However, slightly more participants were dissatisfied than satisfied with the opportunities to comment on draft implementing and delegating acts (27.0% versus 25.2%) and legislative proposals adopted by the College (29.2% versus 28.0%) as well as the opportunity to flag legislation needing improvement (27.2% versus 24.8%). Across the five questions on participation opportunities, between 17.4% and 23.3% of respondents were neither satisfied nor dissatisfied.

Respondents (mainly individuals) to the open questions made a strong call to the European Commission to reach out more to increase awareness of its efforts under the better regulation agenda. Respondents stressed that the outreach efforts on regulatory developments in the EU have to find their way into the mainstream media, because most people do not follow EU social media accounts. According to respondents, the communication is also not tailored to Member States and the members of the public there. National and regional public authorities should play a more prominent role in informing the public.

In response to the open questions, several professionals pointed out that local and regional and local public authorities as well as small and medium enterprises (SMEs) should be consulted better.

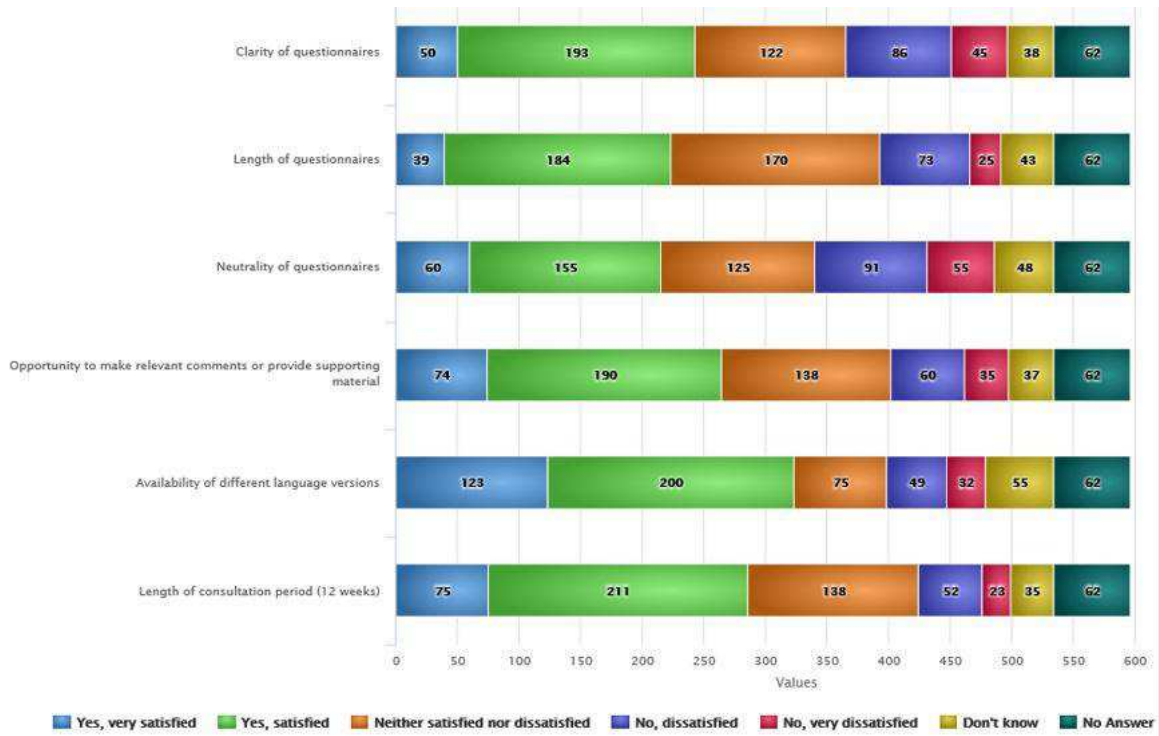
Are you satisfied with the following opportunities to contribute to the policy-making process?



Q9. Are you satisfied with the following aspects of the Commission's public consultations?

Respondents had rather positive opinions on various characteristics of public consultations. The availability of different language versions, the length of the consultation period, and the opportunity to make relevant comments and provide supporting material were the aspects with which respondents were most satisfied (54.2%, 47.8% and 44.3% (very) satisfied respectively).

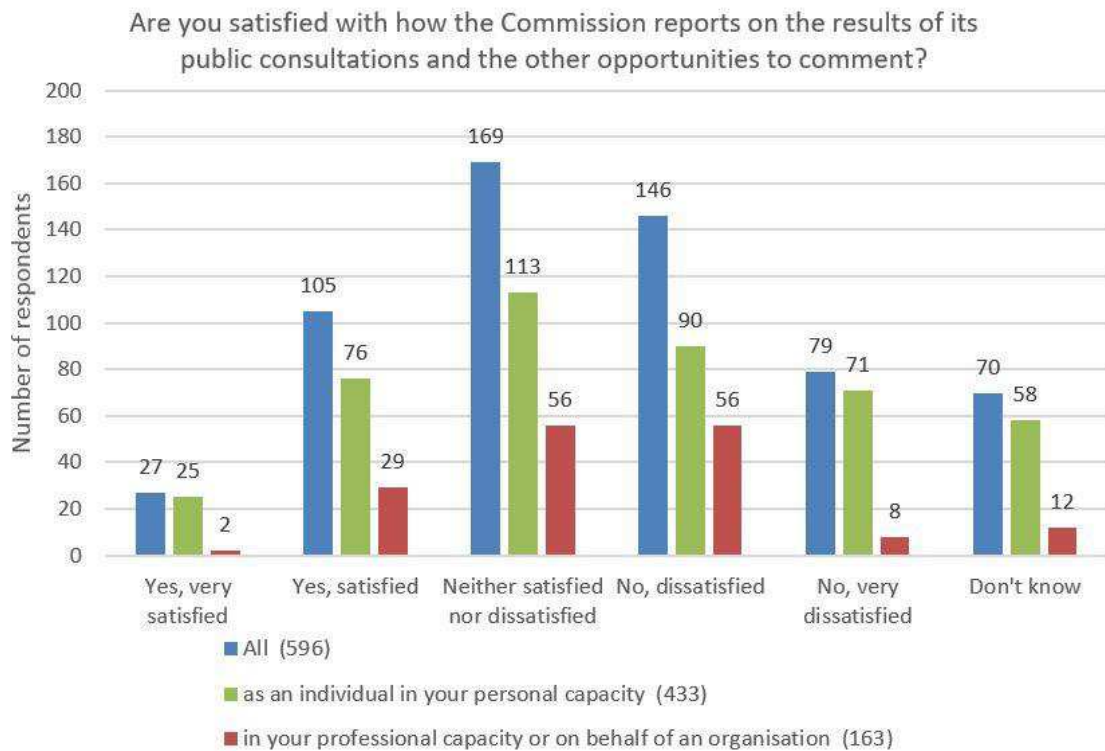
Between 40.8% and 36.1% of the respondents were (very) satisfied with the length, clarity and neutrality of the questionnaires. While the percentage of respondents who were (very) dissatisfied with these six aspects of public consultations was smaller, it is still sizeable (9.7% to 17.35%). Several individuals and organisations/professionals responded in the open text questions that questionnaires should be shorter, clearer, more neutral, less biased and less geared towards the desired option.



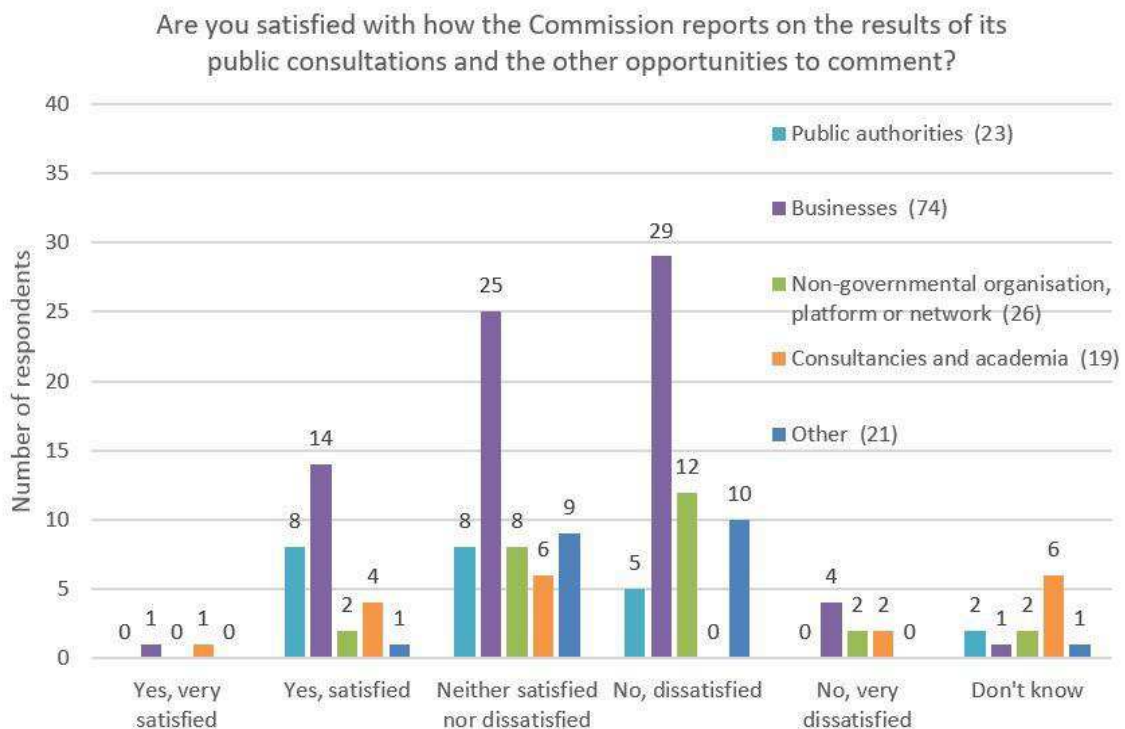
Q10. Are you satisfied with how the Commission reports on the results of its public consultations and the other opportunities to comment?

Out of 596 respondents, 225 (37.8%) were (very) dissatisfied with the way the Commission reports on the results of its public consultations and feedback mechanisms. Another large share was neither satisfied nor dissatisfied (169 respondents, 28.4%). Public authorities who responded tended to be more satisfied than businesses and non-governmental organisations.

Answering the open questions, respondents (both individuals and organisations/professionals) asked that reports on the results of consultation activities be systematically published (in timely fashion).



Breakdown of answers given in a professional capacity:



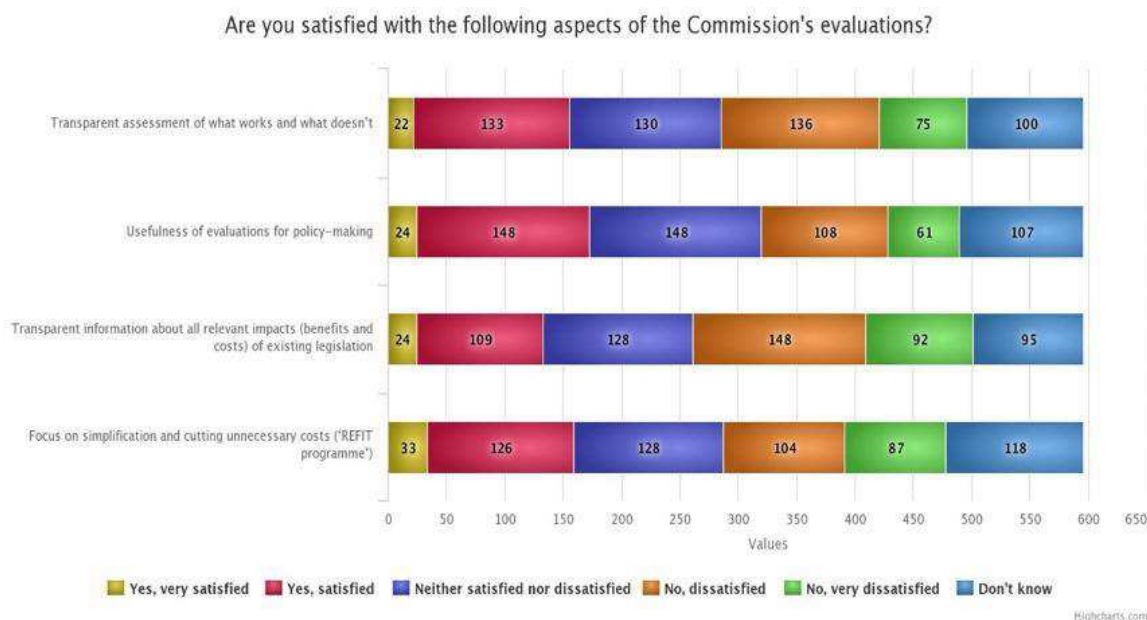
4.3. Evaluations and REFIT: Evaluating existing EU laws

Q11. Are you satisfied with the following aspects of the Commission's evaluations?

The opinions on the various elements of the evaluations carried out by the Commission were mixed. Again, professionals tended to be a bit more positive than individuals.

Additionally, a sizeable group of 95 and 118 respondents (15.9% - 19.8%) did not feel they were capable of judging the quality of the evaluations.

Most of the replies from respondents are more or less equally divided between satisfied, neither satisfied nor dissatisfied and dissatisfied. Only a small number said they were very satisfied (3.7% - 5.5%), while 10.2% to 15.4% were very dissatisfied.



In response to the open questions, several respondents said that the evaluation results needed to be utilised better when performing impact assessments. Some industry representatives asked for stricter adherence to the 'evaluate first' principle.

Respondents suggested that legislation should be given time to be implemented and take effect before initiating evaluations. Evaluations often require assumptions to be made to quantify costs and benefits, which have not yet materialised.

Additionally, respondents called for more transparency in the transposition of directives into national law and in the manner in which they are implemented. The evaluations should be more sensitive to divergences in the implementation of legislation in Member States.

Some respondents argued that evaluations should be done by the European Parliament and the Member States, i.e. that the Commission should not have this responsibility. Others suggested relying less on external contractors to do evaluations.

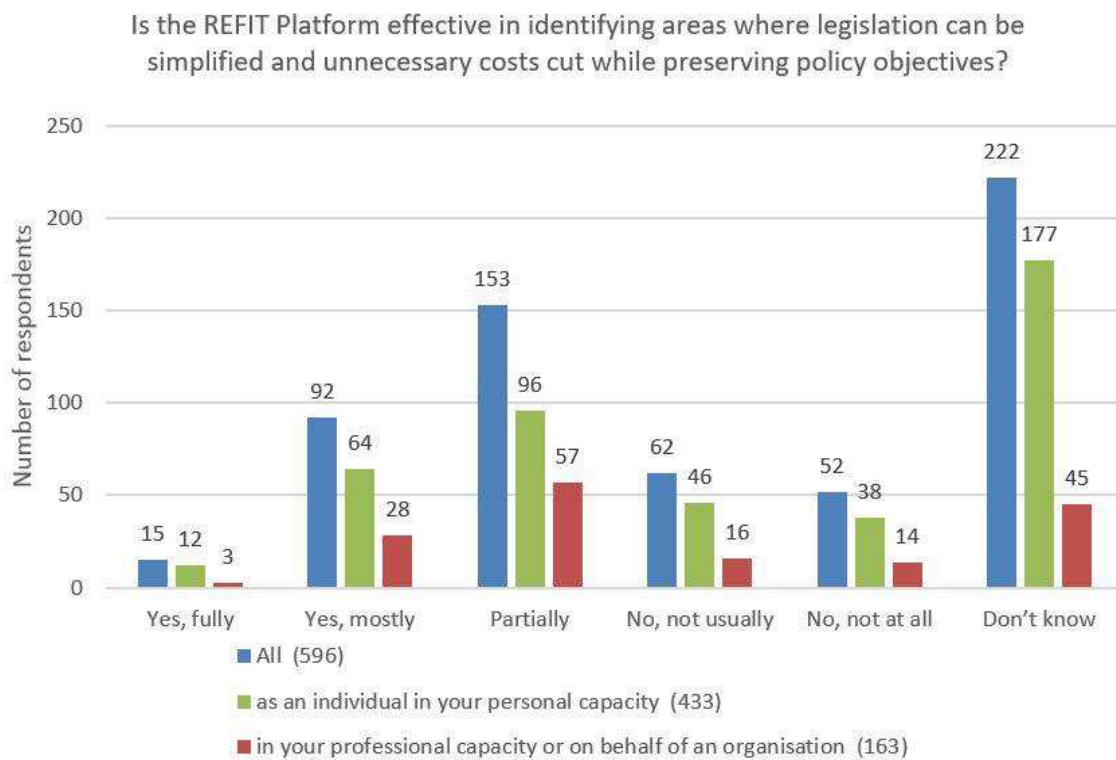
Q12. Is the REFIT Platform effective in identifying areas where legislation can be simplified and unnecessary costs cut while preserving policy objectives?

Many of the respondents were not sufficiently aware of the REFIT Platform. Out of 163 professionals, 45 (28%) did not feel they were able to assess the REFIT Platform's effectiveness. The same was true for 177 (40%) of the 433 individuals who replied. Of the 19 respondents from consultancies and academia, 10 (53%) could not provide a response to this question nor could 9 (approximately 40%) of the 23 public authorities.

Of the 274 who did answer the question, 260 (70%) agreed that the Platform is at least partially effective in identifying areas where legislation can be simplified and unnecessary costs cut.

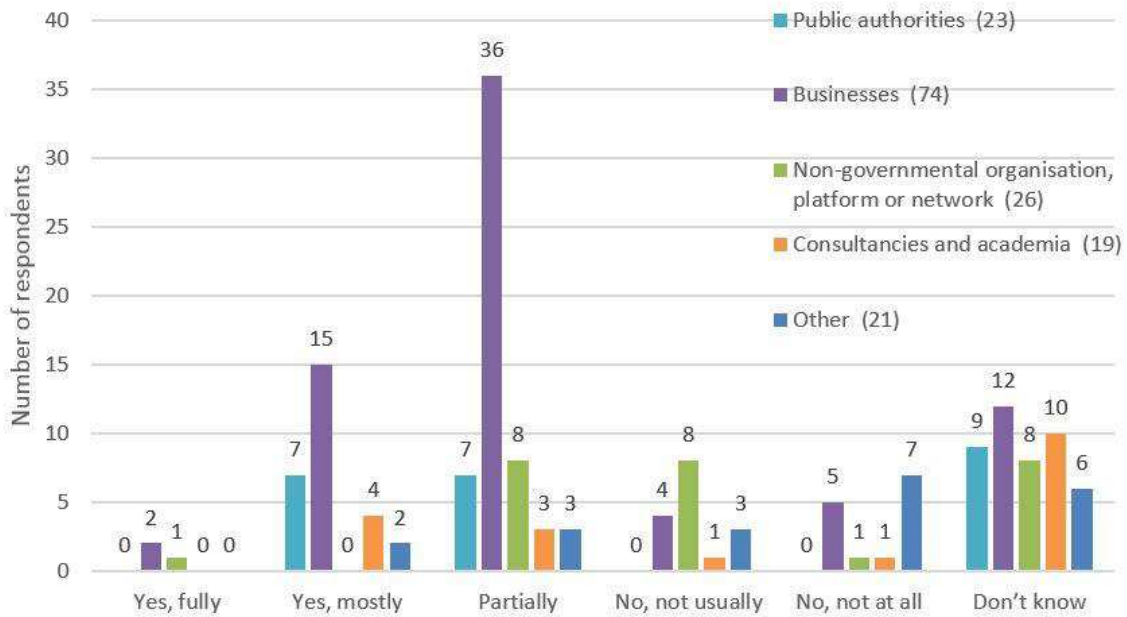
Responding to the relevant open question, respondents indicated that they would like easier access to REFIT reports and opinions and more transparency on how recommendations are implemented.

Regional or local authorities provided strong support for the continuation of the REFIT Platform.



Breakdown of answers given in a professional capacity:

Is the REFIT platform effective in identifying areas where legislation can be simplified and unnecessary costs cut while preserving policy objectives?

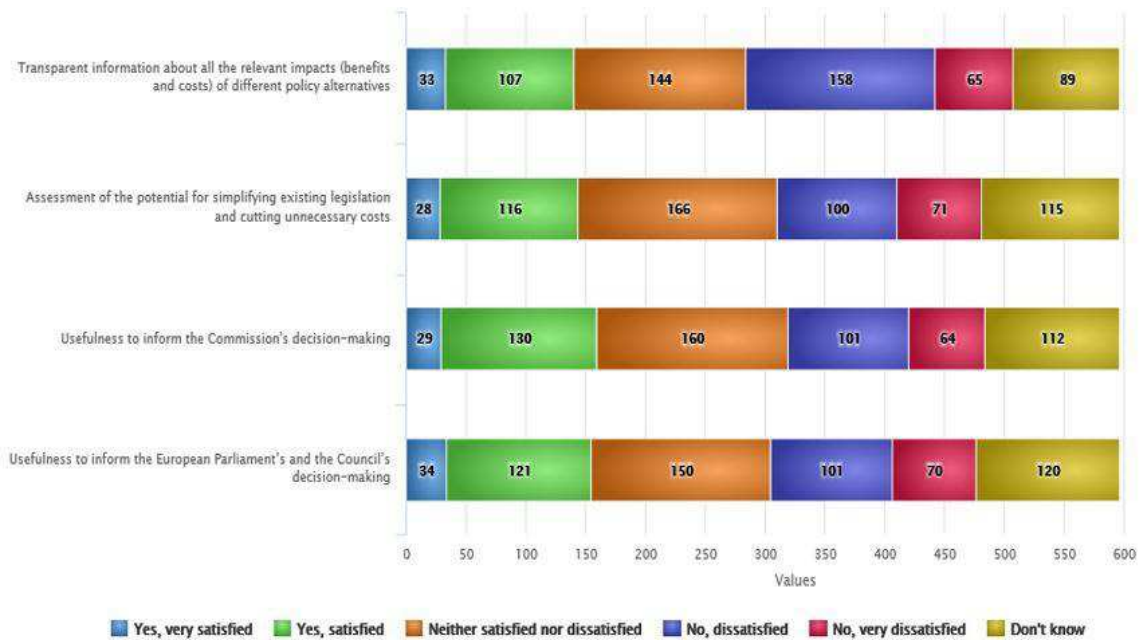


4.4. Impact assessments: Assessing new Commission proposals

Q13. Are you satisfied with the following aspects of the Commission's impact assessments?

A large percentage of the respondents (14.9% to 20.1%) did not know whether they were or were not satisfied with the Commission's impact assessments. Of those who did feel they could answer the question, the largest group (24.2% to 27.9%) said they were neither satisfied nor dissatisfied. With 223 respondents (very) dissatisfied (37.4%), there was most dissatisfaction with the transparency on policy alternatives and their impacts. Around 170 participants (28.5%) were (very) dissatisfied with each of the other three characteristics. While only a few respondents were very satisfied (4.7% to 5.7%) with the impact assessments' various characteristics, 18.0% to 21.8% were satisfied. Respondents saw the impact assessments' usefulness for decision-making slightly more positively than the quality of the assessments.

Professionals were on average neither satisfied nor dissatisfied with the impact assessments, except for transparent information on all relevant impacts (75 out of 168, 44.6%). In addition, businesses were not satisfied with the assessment of the potential for simplifying legislation (29 out of 74, 39.2%).



Professionals responding to the open questions very often flagged that too many pieces of legislation came without an impact assessment. Respondents said that it is not always transparent why some proposals are subject to impact assessments while others are not.

Some respondents indicated that the Interinstitutional Agreement on Better Law-Making is not fully observed. They expressed disappointment that the European Parliament and Council seem to make little use of impact assessments and do not assess their amendments.

Respondents felt that best practices on transparency were not consistently followed, so that, for example, the analysis presented, including the choice of options, was not transparent and comprehensible. The criticism was diverse, covering the whole range: there was the feeling that political considerations outweighed all other input, consultation questions were found to be biased or too limited, not all information was published, etc. Professionals added that the use and presentation of numerical models often was detrimental to transparency.

Individuals and professionals replying to the open questions are of the opinion that the scope of the impacts assessed is too limited, focusing too much on economic issues, big industry and other large stakeholders, in particular. The wish to look rather at society as a whole (e.g. on environmental impacts, effects on SMEs/micro-businesses, impacts on individuals/consumers, health, fundamental/basic rights, inequality/poverty/social dialogue, minorities) was often voiced.

Professionals very often criticise the varying analytical and methodological quality across impact assessments and the low quality of the underlying data.

Regarding subsidiarity, some respondents find the current assessment overly legalistic and formalistic. They claim that the added value of action at EU level needs to be analysed based on evidence. Professionals said that harmonisation and cross-border activity should not be overused as arguments for justification. In this context, the remark was made that more than 20 different approaches do not necessarily imply a need for harmonisation; rather it could be evidence that the Member States have successfully tackled the problem.

Respondents proposed various suggestions on how to be better involved. Moreover, local and regional levels of government should better be taken into account. They said that a territorial and urban impact assessment should be done, EU-level action should be better justified, and there should be a closer examination of what measures Member States have taken.

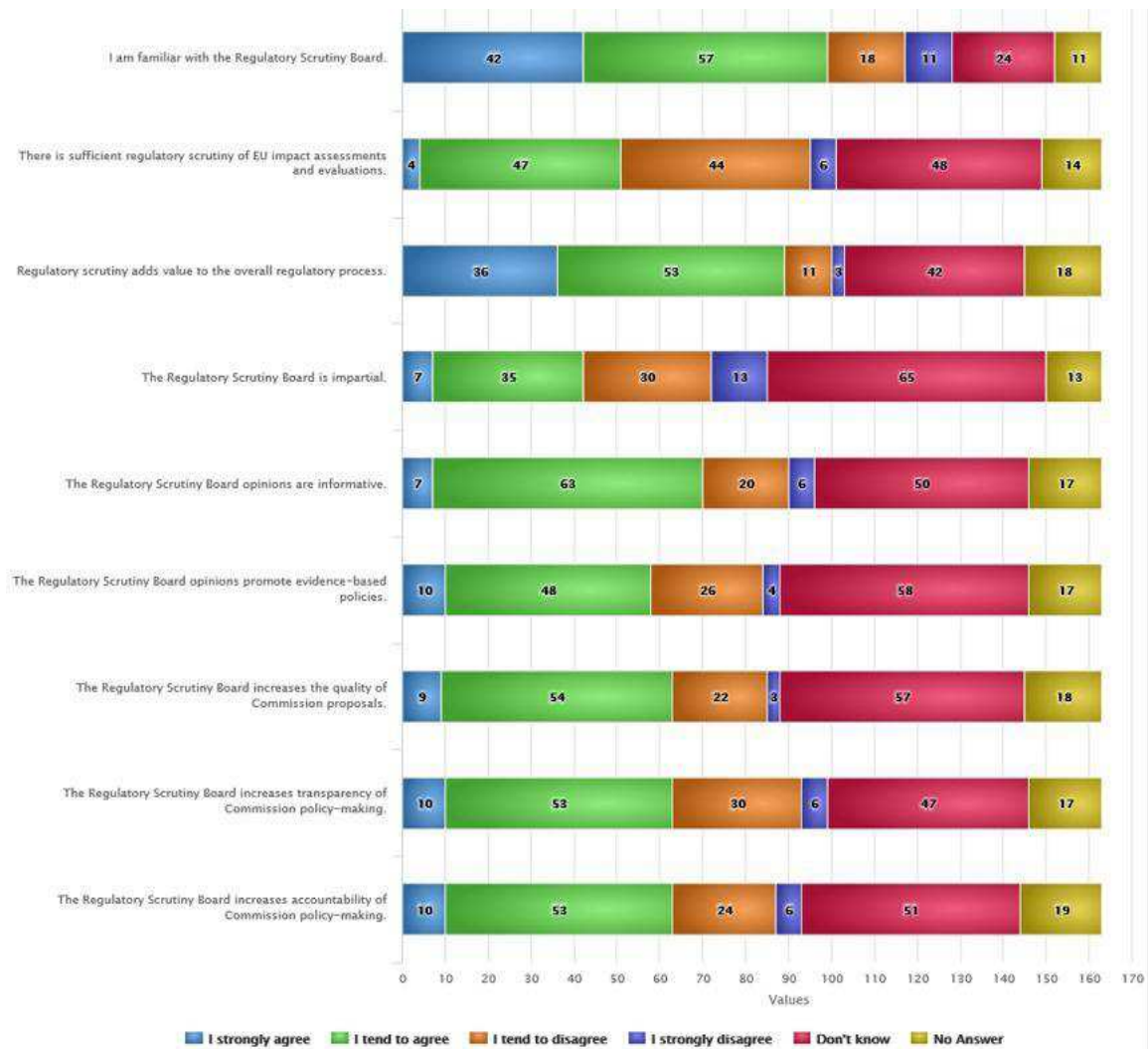
4.5. Regulatory scrutiny: Scrutinising the quality of impact assessments and evaluations

Q14. Please indicate the level of your agreement with each of the following statements regarding regulatory scrutiny

Among individuals, 320 (74%) out of 433 said that they were not familiar with the Regulatory Scrutiny Board (the Board) or barely so, whereas 64 (39%) out of 163 professionals stated the same. Hence, awareness of the Board is very low.

Of those who did know about regulatory scrutiny, an overwhelming majority thought that the Board added value to the regulatory process (89 out of 103, 86.4%). Additionally, more respondents had a positive opinion of the Board's characteristics than a negative opinion. On the two questions whether there was sufficient regulatory scrutiny and whether the Board was impartial, respondents were evenly split. Moreover, professionals are more likely to have positive opinions about the Board than individuals are in their private capacity.

It emerges from the answers to the open questions that respondents clearly do not see the Board as a body exercising purely internal quality control. Given the absence of a similar body elsewhere in the legislation process, for example at the level of co-legislators, the Board is expected to have a much larger role in the policymaking process. Several respondents proposed giving it more independence by establishing a secretariat for the Board independent from the Commission or by recruiting all members externally. Additionally, respondents suggested strengthening the mandate to allow the Board to assess inception impact assessments and roadmaps as well as more evaluations.

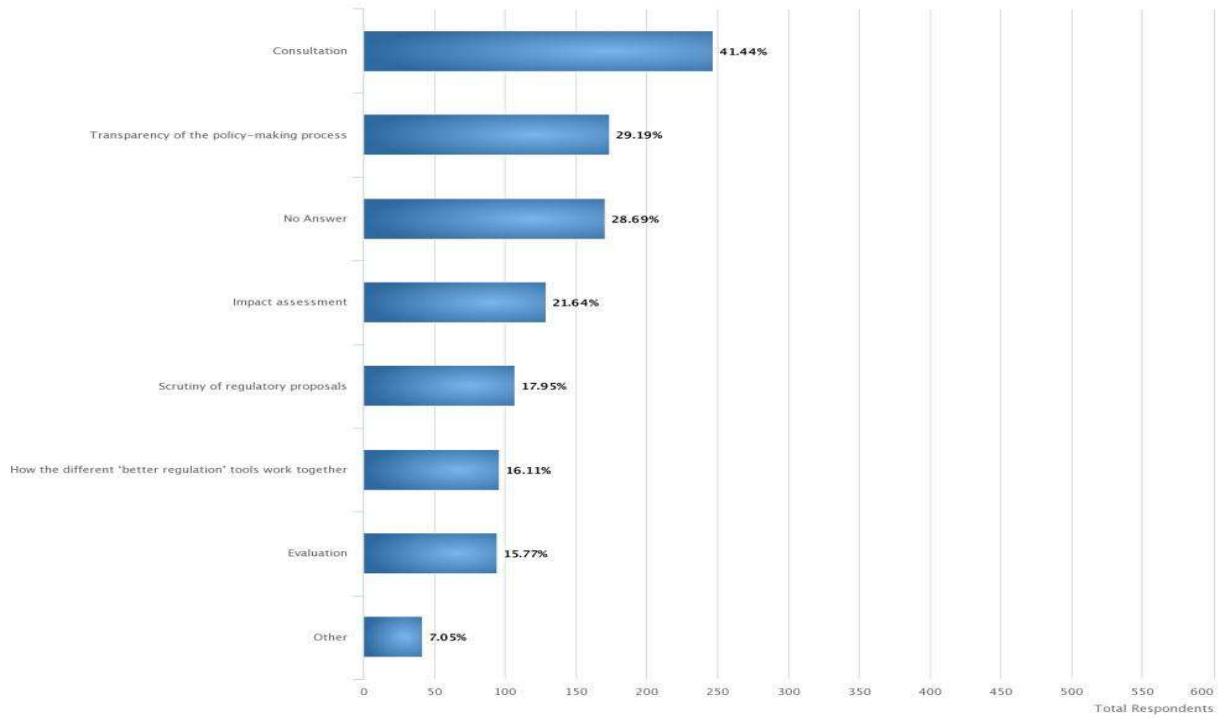


4.6. Final questions on past and future progress

Q15. Please select up to three areas where the Commission has made (relatively more) progress since 2014.

The three areas of better regulation where respondents saw the most progress since 2015 are mainly public consultation, transparency of the policymaking process and impact assessments. Businesses observed, in particular, progress in the scrutiny of legislative proposals.

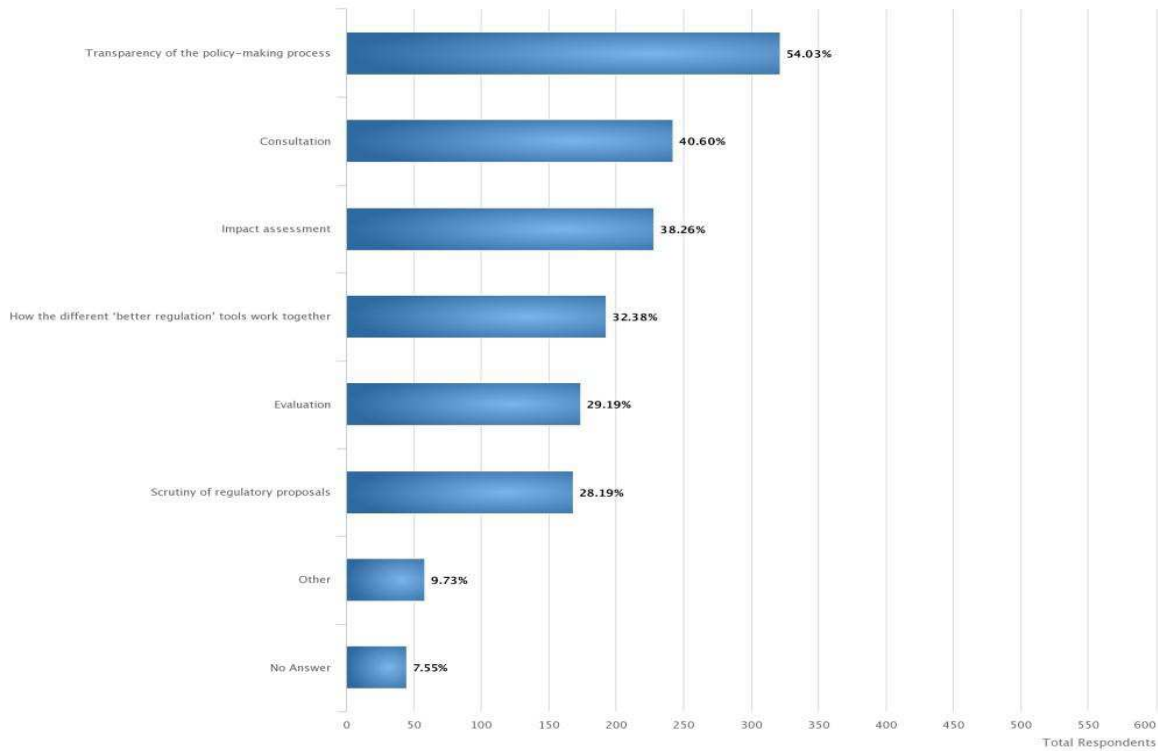
Please select up to three areas where the Commission has made (relatively more) progress since 2014, if any.



Q16. Please select up to three areas where the Commission should make improvements in the future.

The opinions of private and professional respondents diverge on future improvements. While individuals saw further improvement necessary in areas where most progress has been made — i.e. consultation, transparency and impact assessments — professionals would like to see also more progress on evaluations.

Please select up to three areas where the Commission should make improvements in the future.



4.7. Conclusions of the public consultation questionnaire

Professionals tended to be more positive about the Commission's better regulation efforts than individuals responding in a private capacity.

Individual respondents often indicated that they found the decision-making process with its better regulation elements confusing, did not find it transparent or were simply unaware of its elements, especially REFIT and impact assessments.

The new web portal [Have Your Say](#) was welcomed by several respondents, but consultation and transparency remain the top items that respondents would like to see further improved. Additionally, many individuals had the impression that they were overlooked by the analyses. Like civil society organisations, they argued that the economic focus is too strong and neglects issues such as (public) health, inequality and the climate.

Professionals considered themselves better informed about the better regulation agenda and the opportunities to participate than individual respondents did. They made proposals to strengthen several elements of better regulation and to increase the opportunities for them to participate, and urged the Commission, the European Parliament and the European Council to assess the impacts of every proposal and amendment.

4.8. Position papers

Overall, stakeholders welcomed the progress that the Commission has made on better regulation since 2015. They especially appreciated the increased possibilities for participation. In their position papers, they call for continued efforts and make many suggestions to further improve and elaborate the better regulation system. To be able to

advocate better their interests, stakeholders proposed further improving participation, increasing transparency and de-politicising the better regulation system. Additionally, NGOs and social partners called for an overhaul to put the public interest rather than the economy into the focus. National and regional governments as well as businesses supported the economic orientation and renewed their call to pay close attention to the regulatory burden placed on each of them. At the same time, two members of the business community worried about better regulation leading to deregulation. Finally, members of the research community offered their specific expertise.

For more detail, see the web page where all position papers have been published ¹⁶⁰.

Public authorities

In alphabetical order, the national governments of Denmark, Finland and the United Kingdom as well as the organisation representing the interests of Danish local governments (LGDK) submitted relevant position papers. In a separate document, the national government of Malta provided extended answers to the open questions in the public consultation online.

These public authorities univocally welcome the improvements brought by the better regulation agenda. They propose various ways to further strengthen the elements of the better regulation system and to continue the REFIT programme. They also support an economic orientation, referring to competitiveness, economic growth, employment and innovation as important issues to be considered. Additionally, public authorities ask for continued efforts on quantification and burden reduction.

For the Danish, Finnish, Maltese and British public authorities, especially the Danish local governments, implementation was a key issue. In this context, they considered more granularity in the analyses as essential. The Danish local governments gave as an example “that an impact assessment shows that 40% of workers will get better terms for a given action at EU level. It would be desirable to investigate *which* workers this applies to and from *which* Member States.”

Additionally, these public authorities also asked the Commission to pay attention to the density and complexity of its legislation, which is especially caused by implementing acts and delegated acts. According to them, these acts often weigh heavily on local governments and small and medium-sized businesses who have to understand and apply those rules.

In terms of proposed changes, those proposed to improve stakeholder consultations and participation in the REFIT Platform played the most prominent role in these public authorities’ position papers. They urged the Commission: to make sure that all stakeholder groups are included; to drive up the number and diversity of contributions; to have more open-ended questionnaires; to follow up on stakeholders’ contributions systematically and consistently; and to improve the inclusion of (detailed) stakeholder contributions in analyses. Another suggestion made by several public authorities is to increase the Regulatory Scrutiny Board’s independence. Many detailed suggestions regarding the Commission’s better regulation system can be found in the position papers themselves.

¹⁶⁰ https://ec.europa.eu/info/consultations/public-consultation-stocktaking-commissions-better-regulation-approach_en

Civil society (NGOs)

In alphabetical order, BirdLife Europe, CONCORD (European NGO confederation for relief and development), the European Environmental Bureau, NABU and WWF submitted position papers, with those of BirdLife and NABU being almost identical.

The following statement of the WWF reflects these NGOs' concerns succinctly: "Currently the Better Regulation guidelines mainly aim to support economic growth by ensuring that its proposals meet policy goals at minimum cost, while maintaining social and environmental sustainability considered as a secondary objective." Therefore, the position papers call for a reform or even an overhaul of the Commission's current better regulation system.

These NGOs urge the Commission to put public interest rather than the private interest of the business community at the centre of the better regulation agenda. A related criticism is that the environmental impacts do not receive the same attention as economic impacts. These NGOs see an overemphasis on quantification, especially in monetary terms, as a root cause. According to them, the current quantifying practices also systematically disadvantage future generations and non-linearly behaving environmental systems. CONCORD commented positively on the sustainability impact assessments and human rights impact assessments carried out by DG TRADE for trade negotiation proposals.

These NGOs look to the better regulation system to track the European Union's performance in meeting (internationally) agreed objectives and goals, such as the Sustainable Development Goals and climate targets. For example, they find that setting indicators and monitoring the achievement of policy goals against those indicators increases the EU's accountability. The environmental NGOs proposed that sustainability principles become mainstream by including them in the better regulation toolbox and having the Regulatory Scrutiny Board oversee their application. CONCORD added the concept of policy coherence for development to this request.

Additionally, these NGOs emphasise the importance of achieving policy objectives effectively and efficiently, rather than focusing on cost cutting and simplification, which is what the current REFIT programme does in their view. In this regard, NGOs ask that better attention be paid to policy coherence, implementation in the Member States and enforcement.

Finally, these NGOs would like to see stakeholder consultations improved. It is important to them to be consulted also on strategic policy considerations rather than only on a narrow set of pre-determined policy choices. Moreover, they stress the importance of making sure that all stakeholders, including small ones, are reached. NGOs also ask the Commission to make questionnaires more understandable, to balance the stakeholders' input fairly in the analyses and to provide feedback to those who participated.

Business community

In alphabetical order, the following organisations from the business community submitted relevant position papers: Accountancy Europe, Advertising Information Group, Bundesverband der deutschen Industrie, BusinessEurope, Deutsche Industrie- und Handelskammertag, EuroChambers, Insurance Europe, Näringslivets Regelnämnd, Specialised Nutrition Europe, Verband der chemischen Industrie, Zentralverband des deutschen Handwerks. There is much consensus on what would need to be improved. Many of the papers feature long lists of detailed suggestions for improvement. It should

be noted that 4 of the 11 position papers from the business community came from Germany.

For the business community, the consultations are of great importance. The one-page position paper by Accountancy Europe represents the variety of suggestions made. Besides improving the questionnaire, as also proposed by the public authorities (see above), they pointed out that the current format of the questionnaire and the lengths of response periods often make it difficult for them to consult their constituents. The members of the business community would also like to see their contributions to consultations fairly weighted and more visible in the analyses.

Additionally, many of the position papers stressed that every legislative proposal, including implementing acts and delegated acts, should come with an analysis of the underlying evidence. They also called for the co-legislators to increase their efforts to assess the impact of their amendments during the negotiations. Furthermore, several papers drew attention to the correct application of the subsidiarity and proportionality principles.

A frequently mentioned issue was policy fragmentation, because impact assessments do not sufficiently consider impacts on other policy areas. Furthermore, the business community perceived impact assessments often to have a bias. They flagged that initial preferences for certain policy options should not lead to selective data selection and that the collected data needs to be of high quality.

The position papers stressed the importance of the ‘evaluate first’ principle, because it makes the European authorities more accountable. At the same time, they pointed out that evaluations are not informative if they are done too early. A few organisations noted that the quality of evaluations was still trailing behind the quality of impact assessments.

Another frequently mentioned topic was the transposition by Member States, including gold-plating. Several papers asked for more transparency and suggested developing a common definition of over-implementation. The business community would also like to see efforts to further increase transparency. In particular, they would like to see the Commission publish draft impact assessments, so that stakeholders can already have a look at the underlying data and analysis. Additionally, almost every position paper mentioned that trilogues lacked transparency.

The several respondents from the business community were of the opinion that the Regulatory Scrutiny Board should enjoy greater independence. They also regretted the fact that the Board’s opinions were too often not sufficiently followed up on. Finally, businesses welcomed the REFIT Platform and cautioned the Commission not to politicise it, i.e. make policy through it. They would like the Platform’s scope to be broadened to cross-cutting issues and they called for better follow-up of the Platform’s opinions.

The position paper from Special Nutrition Europe (SNE) provided a different angle than the others. SNE was worried that deregulation, particularly in food labelling, would jeopardise the recognition of their specialised productions.

For further reference, the published position papers provide many detailed suggestions regarding the Commission’s better regulation system.

Trade unions

Two trade unions submitted position papers. The European Trade Union was highly critical of the Commission's better regulation agenda. Quoting from their paper: "the 'Better Regulation' package puts the supposed needs of business above all others; turns minimum standards into maximum standards; puts a value on impact assessments that they do not have; brings a longer, costlier and more bureaucratic procedure that will risk delaying social progress; makes it more difficult for elected EU institutions to change European Commission proposals and could undermine the principle that EU law applies equally to all. In short, it adds red tape, slows down progressive change and de-democratises Europe."

The Beamtenbund und Tarifunion (DBB; German association of government officials) drew attention to the importance of social protection, including health, equal chances and workers' rights. They perceived better regulation as overly focusing on reducing the burden for businesses.

Research community (think tanks, academia and consultants)

The European Risk Forum, Quadrant Conseil and RegWatch Europe submitted position papers that all take up a different angle to better regulation. Nonetheless, they all call on the Commission to further consolidate its better regulation efforts.

The main message of RegWatch Europe's paper is to not aggregate analyses at EU level. In their opinion, it is more informative to read what the impact on individuals and businesses would be. As a consultant carrying out evaluations, Quadrant Conseil implores the Commission to move beyond procedure and rules to create a genuine evaluation culture among its officials. Paraphrasing Quadrant Conseil's words, an evaluation should not be a report, but an internal process. To this end, the consultant proposes, for example, establishing a body of evaluators and increasing the mutual link between impact assessments and evaluations. It also calls for a flexible application of the rules and procedures in order to make evaluations truly useful, given the wide variety of policy areas. The European Risk Forum takes an approach opposite to the one calling for flexibility advocated by Quadrant Conseil. The Forum urges additional codification, standardisation, formal oversight and requirements to ensure that the scientific evidence and analyses are of the highest quality. For example, it is concerned about bias, the distinctions between fact and opinion and between measured evidence and theoretical extrapolation, and applying state-of-the-art quantification methods. Additionally, improving risk management legislation and sophisticated risk analysis is close to their heart. Their long list of detailed suggestions includes ideas to improve the tools on sectoral competitiveness (tool #20) and research and innovation (tool #21) in the better regulation toolbox.

5. EU INSTITUTIONS AND CONSULTATIVE BODIES

5.1. The European Parliament

In its briefings and studies in the fields of ex-ante impact assessment and ex-post impact evaluation, the European Parliamentary research service (EPRS) seeks to use the European Commission's own impact assessments and evaluations as the starting-point for the analysis which it provides to parliamentary committees. For this and other reasons, it attaches great importance on the latter being of high quality and based on reliable data. It sees a general rise in the quality of Commission impact assessments over time, but expresses a wider concern in the European Parliament that too many significant

proposals from the Commission have recently not been accompanied by impact assessments.

Impact assessments and regulatory scrutiny

The EPRS critically analyses every major Commission impact assessment: its specialist ex-ante impact assessment unit has undertaken over 250 'initial appraisals' of such texts since 2012. Its overall assessment of the quality and coherence of Commission impact assessments - reflected in annual reports¹⁶¹ on the subject to the parliamentary committees - is that whilst a rising curve of quality is generally observable in the Commission's impact assessment work, with a more consistent use of evidence and better balance between qualitative and quantitative methodologies over time, there are still some shortcomings to be addressed. The Parliament's services have also undertaken 68 impact assessments for committees on amendments put forward to Commission legislative proposals since 2007 - seeking to work on the basis of the Commission's impact assessments, wherever possible - as well as a number of substitute or supplementary impact assessments for committees.

As foreseen in the Inter-Institutional Agreement on Better Law-Making and requested by the Parliament in various resolutions, the Parliament would like at least all legislative initiatives included in the Commission's annual work programme and/or in the joint declaration (between the Parliament, Council and the Commission) to be accompanied by an impact assessment, wherever possible, and to be warned early on if this is not going to be the case. This is important both for consideration of proposals in committee and for negotiations in trilogues. Therefore, it is considered problematic that about one third of recent Commission proposals in such categories have come without an impact assessment, for whatever reason, with a desire for a clearer explanation of why impact assessments are not conducted and ideally an early warning system in such cases.

The EPRS explained that parliamentary committees have expressed concern that Commission impact assessments do not always fully cover the various aspects foreseen in the inception impact assessment in a balanced way. They note that, in some cases, the quality of Commission impact assessments could be improved by balancing the potential economic impacts of an initiative with a more systematic consideration of environmental, social and other impacts, and by better identifying potential implications for citizens. In some cases, the different policy options and their potential effects could also be presented more clearly, whilst some impact assessments are considered to be too long and insufficiently concise as texts. When necessary, impact assessments could be updated after having passed the Regulatory Scrutiny Board to fully reflect the Commission's final legislative proposal, and underlying studies and the Board opinions could be published at the same time as the impact assessment.

Evaluation and REFIT

The European Parliament considers it a positive development that the Regulatory Scrutiny Board now scrutinises both impact assessments and evaluations, not least because the institution has attached increasing importance to the evaluation of existing legislation and policy in recent years. In April 2016, the Parliament approved new internal provisions for carrying out Implementation Reports, and during this legislative

¹⁶¹ <https://epthinktank.eu/category/publications/>

term (2014-19), 65 such Implementation Reports have been adopted - almost two and a half times as many as during the previous 2009-14 term. To facilitate this work, the EPRS publishes (since 2014) 'rolling check-lists' that keep track of reporting requirements in EU legislation, of on-going and planned evaluations by the Commission, and of EP policy requests to the Commission. It also drafts short 'Implementation Appraisals', analysing the state of implementation of selected legislation, and longer 'European Implementation Assessments' (EIAs), which provide an analytical base for the Implementation Reports produced by parliamentary committees. This material not only looks at general issues arising in implementation, but explores how far the Parliament's own objectives have been met and any other issues reflecting its Members' concerns.

Such texts usually take full account of Commission evaluations and of data provided by the Commission, although questions of data availability and quality are sometimes of concern. The EPRS suggests applying clearer quality criteria, in particular for non-governmental data, together with a greater prioritisation of data collection methods used by the Commission. More widely, the Parliament and its committees have called on the Commission to give the institution greater access to data it may hold - such as information relating to pre-infringement procedures and on Member States' transposition measures and explanatory documents - and also requested it to indicate more clearly when Member States introduce additional administrative requirements or other elements unrelated to EU legislation, or set higher standards that go beyond EU-wide minimum standards.

On REFIT, the Parliament would like the Commission's annual work programme to seek to identify REFIT evaluations and initiatives that could be agreed in the joint declaration (between the Parliament, Council and the Commission) each year. The scoreboard published by the Commission in respect of the REFIT element of the Commission's programme is considered useful, although the schedule foreseen is not always followed and proposals are often delayed. There is also thought to be scope for improvement in the quantification of the reduction in regulatory burdens and potential savings.

Consultation

The European Parliament has strengthened its attempts to consult with national parliaments on legislative issues, although it has so far received only limited feedback on the practical experience of applying EU legislation in the Member States. It has welcomed the commitment made by the Commission, before adopting a proposal, to consult widely - in particular with SMEs, civil society and other end-users - but considers that the Commission should focus on consultation before the adoption of a proposal, and not to continue any public consultation during the legislative process itself, since during this phase, it is for the Parliament and Member States to carry out their own consultations, if they choose to.

5.2. The General Secretariat of the Council

On 11 January 2019, a delegation from the General Secretariat of the Council (referred to as 'the General Secretariat of the Council' or 'GSC') visited the Commission's Secretariat-General to informally exchange views in the context of the better regulation stocktaking exercise. The officials from the GSC had consulted some of the sectoral departments of the General Secretariat for an overview of the strengths and weaknesses of the current better regulation system. (The views expressed here do not commit the Council as such in any way)

Impact assessments and regulatory scrutiny

As the GSC only has limited capacity to carry out its own impact assessments, it would encourage the Commission to further strengthen the quality of its impact assessments, notably by increasing their readability and working on the executive summaries. Additionally, they remarked that the Commission could pay more attention and focus on the effects of certain legislative proposals at Member State level.

The GSC found that the impact assessments provided a lot of relevant information that facilitated agreement and increased the efficiency of the legislative process. They acknowledged that the use of impact assessments across working parties and presidencies varied. This depended among others on the policy area and the political sensitivity of the file. The GSC also clarified that the working parties were free to choose their approach to impact assessments, but that the working party chairpersons usually read them closely.

The GSC found the impact assessments generally thorough and of high quality, but also flagged that they were lengthy. Hence, the executive summary was of utmost importance. Furthermore, they would like to see better justifications of the options and, in some cases, more analysis at Member State level, as mentioned before. The GSC also pointed out that the legislative proposals were not always consistent with the impact assessments. Additionally, the GSC preferred the presentation of the available underlying evidence even if it was not possible to present it as an impact assessment.

The GSC reported that they had built up capacity to carry out impact assessments on their own. This capacity is very small and meant as a last resort. Preferably, the Member States should carry out the impact assessments for the major amendments they propose. Any analytical work to be carried out by the Council would be heavily based on the preceding work done by the Commission and the European Parliament. So far, the GSC's capacity remains untested, because it has not yet received either an eligible request for an impact assessment or there was no simple majority support for an impact assessment in the Council.

Evaluations

The GSC stressed the importance of obeying the 'evaluate first' principle and pointed out that timing is very important for evaluations. The GSC regretted that it is difficult to gather information from national and regional authorities, which results in interest groups having disproportionately loud voices. The GSC suggested there should be more awareness raising about opportunities for participation and such participation should be made less resource-intensive.

The GSC observed that the quality of evaluations was inferior to that of impact assessments. Especially, it found the research design poor and would like to see the structure of evaluations improved. Additionally, the GSC was of the view that based on experience, the Regulatory Scrutiny Board helped to increase the quality of evaluations. The GSC therefore supported the idea of seeing the Board's involvement expanded.

Subsidiarity and proportionality

The GSC has observed an increase in the request for subsidiarity and proportionality in legal assessments since the Lisbon Treaty. In the GSC's view (based on feedback from its services), the high quality of the Commission's analyses in this respect was of great importance to the GSC's services. However, presently, as far as subsidiarity and proportionality are concerned, it is only possible to find a very short assessment on those

aspects in the Commission's Memoranda of Understanding. In particular, it would be essential for the Commission's analysis to cover all viable policy options. Additionally, the GSC suggested doing a more in-depth analysis on subsidiarity issues for politically sensitive files (especially in policy areas where, within the Council, unanimity is still required for decision-making on issues such as taxation, for example.). Finally, the GSC thought that the Commission should refrain from using standard sentences in the subsidiarity and proportionality analysis, especially in the executive summary, as this did not bring any added value.

5.3. The Council Working Group on Competitiveness and Growth

In response to the consultation with the Council's Working Group on Competitiveness and Growth (COMPRCO), Estonia, Germany, Ireland, Poland and Spain submitted written contributions. They appreciated impact assessments considerably, because they help them understand the Commission's thinking and help them communicate with national stakeholders. Additionally, several Member States valued the impact assessments as a basis for their own analyses. Hence, most of them stated that it is of great importance for all legislative proposals to come with impact assessments and for amendments to be assessed as well. They also stressed the need to better assess the impact on individual Member States, which according to one Member State would facilitate negotiations. Regarding impact assessments and evaluations, Estonia, Germany, Ireland, Poland and Spain acknowledged their increasing quality but asked for shorter, more readable documents, a more consistent application of methodologies and an analysis of (macroeconomic) impacts (GDP, export, jobs) rather than output (patents, papers).

These Member States suggested that consultations should be more representative, that national, regional and local governments should be consulted more (for example, through the Committee of the Regions), and that individuals who do not speak English or do not have internet access should be included. Estonia proposed an automated analysis of responses to online consultations that would be available online directly. Poland also proposed giving more attention to non-governmental organisations.

Finally, two Member States called for a reduction of targets or a one-in/one-out mechanism to reduce bureaucracy.

5.4. The Committee of the Regions

The European Committee of the Regions (CoR) expressed its views on better regulation in several opinions¹⁶². In addition, views were exchanged with the officials of the CoR. Their main concern is to increase the participation of regional and local authorities in policy development and in the assessment of legislation's impact on the regions, including the administrative burden placed on their authorities. End of 2018, the CoR launched its network of regional hubs, as an additional source of feedback, to assess EU policy implementation at local and regional level.

¹⁶² Committee of the Regions - CIVEX-VI/007, 12, 13 and 14 October 2015 OPINION - EU Agenda on Better Regulation

Committee of the Regions - CIVEX-VI/012, 7 and 8 December 2016 OPINION - The REFIT Programme: the local and regional perspective

Committee of the Regions - ECON-VI/020, 12-13 July 2017 OPINION - Smart Regulation for SMEs

Impact assessments and scrutiny

In its opinions, the CoR made proposals to improve impact assessments. In particular, impact assessments should explore the territorial dimension of major policy options and the effects of legislation on the administrative burden for local and regional authorities. Good examples of successful territorial impact assessments undertaken by the CoR, as pointed out by the officials of the CoR, include the UK's withdrawal from the EU, the European Regional Development Fund after 2020 and the Urban Agenda.

The CoR uses the information provided in impact assessments as a technical basis for background notes and political fiches to inform the political level.

Based on the Commission's roadmap, the CoR identifies five priority areas per year, for which they conduct territorial impact assessments. In the last 2 years some of these were conducted with the Commission's Directorate-General for Regional and Urban Policy, with the CoR providing the Commission with input for impact assessments. Nonetheless, in most cases the Commission does not involve the CoR at an early stage of the impact assessment process. The officials of the CoR underlined they would prefer to be involved at an earlier stage of the process, as made possible by the CoR-Commission cooperation agreement, in order to flag territorial dimension aspects. The officials of the CoR also pointed to the lack of regional data, which limits a clear assessment of territorial impacts in some areas.

The officials of the CoR welcomed the Regulatory Scrutiny Board's independent scrutiny and acknowledged that impact assessments were scrutinised for including an analysis of the territorial impact. However, they asked for more regional competence within the Board and more effort on scrutinising territorial impact assessments.

Evaluation and REFIT

In its opinions, the CoR welcomed the stronger role of evaluations and the introduction of REFIT to support simplification and regulatory cost reductions without compromising policy objectives. Their officials find that REFIT sets an essential focus by assessing whether implementation is practical and feasible. In the CoR's view, the REFIT Platform should focus on specific issues within EU legislation and take a more ambitious approach, i.e. aiming for structural improvements to the EU regulatory framework in the medium-term. The officials of the CoR found that the highly technical level of submissions to the REFIT Platform made it difficult for the CoR to contribute within the short timeframes. Additionally, broader themes would facilitate input from local and regional government. The officials suggested that the REFIT Platform be involved in REFIT evaluations and agreed with the proposals put forward in the 'Commission Communication on the principles of subsidiarity and proportionality'¹⁶³ to give local and regional authorities a greater presence within the Platform and to widen its focus to address subsidiarity, proportionality, legislative density and the role of local and regional authorities in implementing EU law.

¹⁶³ COM(2018) 703 final of 23 October 2018 Communication from the Commission to the European Parliament, the European Council, the European Economic and Social Committee and the Committee of the Regions: The principles of subsidiarity and proportionality: Strengthening their role in the EU's policymaking

The officials of the CoR recognised that the Commission had come a long way in its evaluation of legislation, which is more systematically covered, although not to the same degree in all areas. However, they were of the opinion that the timing needed improvement, as evaluations come too late, notably evaluations of spending programmes whose purpose is essentially to inform decisions for the next cycle of multiannual frameworks.

The CoR has initiated a network of regional hubs in response to the ‘Task force on subsidiarity, proportionality and doing less more efficiently’ which presented its conclusions in 2018¹⁶⁴. During a two-year pilot phase, 20 core regions and an additional number of associate regions will provide systematic information and feedback on the implementation of EU legislation at local and regional level, which is shared with EU institutions.

Consultation

In its opinions the CoR supported the actions introduced in 2015 to improve stakeholder consultations. The CoR insisted in its opinions that the Commission and the other institutions should involve regions and local authorities more actively when designing legislation. Their experience in applying EU rules is valuable for assessing the impact of legislation or devising ways to implement policies. Specifically, the CoR asked for a specific set of consultations of regional and local legislative assemblies during the Commission’s policy development. The CoR would like to be involved in their role as consultative body and not as stakeholder. Therefore, they do not participate in public consultations as a rule.

According to the CoR officials, an inherent self-selection of respondents in the public consultation results in sets of responses with high degrees of bias. The timing of consultations can be challenging, such as the quick consultation on the proposals for the multiannual financial framework, making the response by regions and other stakeholders difficult. Hence, they did not find public consultations a good source of data and evidence.

The number of respondents should not be the only benchmark for the success of consultations. There is a strong legitimacy between input and output. This means that providing the target group most affected by new EU legislation (e.g. regions) with meaningful input in the consultation also increases the motivation of these players to comply with the regulation once adopted or once revised.

According to the CoR, the regional hubs pilot scheme with 20 regions and an additional number of associate regions will help increase the input from regional authorities and their regional stakeholders. Participating regions have committed to reply systematically and several times per year to questionnaire consultations on the implementation of EU legislation at local and regional level.

¹⁶⁴ https://ec.europa.eu/commission/sites/beta-political/files/report-task-force-subsidiarity-proportionality-doing-less-more-efficiently_1.pdf

5.5. The European Economic and Social Committee

The European Economic and Social Committee (EESC) has expressed its views on better regulation in several opinions¹⁶⁵. In addition, an exchange of views took place between officials of the Secretariat-General of the Commission and three members of the European Economic and Social Committee on 15 January 2019.

Overall, the EESC welcomed the better regulation agenda, which in their view should become a permanent programme in delivering high-quality Union legislation without undermining key policy objectives or creating deregulation pressure. According to the EESC, it should be continued, further developed and improved by the new Commission after 2019. The EESC stressed the importance of covering the whole life cycle of legislation and in particular its applicability, which needed to be ensured from the start and monitored at the implementation stage.

Impact assessments and scrutiny

The EESC considered impact assessments useful, but the focus on assessing cost must not come at the expense of the assessment of possible benefits that are not as easy to quantify. The EESC encouraged a broader view of the Commission's impact assessments, i.e. they should consider a wider set of options in detail.

The EESC considered it important that the European Council and the European Parliament shared the responsibility of ensuring better regulation, especially when it comes to assessing the impacts of amendments, not least also in keeping with the recommendations from the European Court of Auditors. They suggested that the three institutions should have a shared methodology for impact assessments and an agreed scope.

The better regulation agenda including the Regulatory Scrutiny Board was highly appreciated. The Board has a crucial role, in the EESC's view. Because of its neutrality and know-how, it adds considerably to the credibility of the Commission's proposals.

The EESC regretted that the Board is not well known outside the European institutions and bodies in Brussels. According to them, a Regulatory Scrutiny Board that is more visible in European capitals could help increase the credibility of the Commission's legislative proposals and impact assessments. Additionally, the EESC would like to discuss methodological issues with the Regulatory Scrutiny Board.

Evaluation and REFIT

¹⁶⁵ Opinion of the European Economic and Social Committee on the Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions – Completing the Better Regulation Agenda: Better solutions for better results (2018/C 262/04) OJ C 262, 25.7.2018, p.22

Opinion of the European Economic and Social Committee on 'Analysis of transparency, methodology and resources of impact assessments and evaluations that the European Commission is launching to improve the quality of European legislation' (2017/C 434/02) [OJ C 434, 15.12.2017, p. 11](#)

Opinion of the European Economic and Social Committee on the 'Evaluation of European Commission stakeholder consultations' (2015/C 383/09) [OJ C 383, 17.11.2015, p. 57](#)

Opinion of the European Economic and Social Committee on REFIT (exploratory opinion) (2016/C 303/06) [OJ C 303, 19.8.2016, p. 45](#)

The EESC firmly supports the ‘evaluate first’ principle and is actively involved in better regulation, notably through its participation in the drafting of ex post evaluations. The EESC deemed monitoring of application on the ground to be essential in order to create a legal framework that enabled businesses and individuals to benefit from the advantages of the internal market and to avoid unnecessary administrative burdens.

The EESC subscribed to a REFIT programme that in their view must lead to neither deregulation nor reducing the level of protection of social, environmental or fundamental rights. European legislation is an essential factor in integration, and, when proportionate, it is an important guarantee of protection, promotion and legal certainty for all European stakeholders and citizens. But it is essential to avoid needless regulatory costs.

The EESC is participating in the REFIT Platform. While recognising the progress made by the REFIT Platform in simplifying existing legislation, the EESC proposed that the Platform’s mandate could be extended to not only look at burden reduction but also at improving the legislation, which may include the need for new legislation. Finally, the EESC found that the REFIT Platform did not adequately reflect in its composition the weight that the EESC actually carries by representing civil society.

Consultation

The EESC supported the comprehensive involvement of stakeholders by performing consultations throughout the lifecycle of a political initiative, because it is crucial to consider already at the drafting stage that legislation is easy for Member States and stakeholders to implement. It recognised the progress made on consultation under the better regulation agenda.

Nonetheless, the EESC would like to see more and better interaction with stakeholders and the general public who are affected by proposed legislation. To this effect, the EESC would like to contribute more to identifying relevant stakeholders and disseminating information about consultations to relevant organisations and groups. This would help to ensure that relevant players are aware of the consultation and the possibility to contribute.

6. EUROPEAN COMMISSION OFFICIALS

6.1. Impact assessment

Commission officials strongly supported the concept of evidence-based policymaking. Overall, they found that the process of writing an impact assessment provides a good, systematic preparation for later negotiations and communication about the Commission’s proposals. Some Commission officials were of the opinion that the impact assessment report has to satisfy competing demands of efficient communication and providing evidence on often complex topics. Others were concerned whether the resources required to prepare an impact assessment were proportionate to the benefits and the often limited use in the co-legislative process.

Commission officials were of the opinion that the absence of impact assessments needs to be justified much better, for example in the explanatory memorandum or even in a press release, but they preferred not having an impact assessment over having one of low quality.

The quality of analyses presented in impact assessments is often limited by the availability of relevant information. Commission officials drew attention to the difficulties they have in gathering reliable, comprehensive data and in applying methodologies coherently and transparently across a wide variety of policy fields and across all Member States.

6.2. Evaluation

Commission officials acknowledged that evaluations are useful for learning about the functioning of EU interventions and can help gain new insights when well timed, for example, when the policy has been implemented for a while, and its results and impacts can be meaningfully assessed. Commission officials had mixed views about the ‘evaluate first’ principle. Some argued that it is intuitive and logical as it closes the policy cycle. Others suggested deciding on the need for evaluations on a case-by-case basis.

Some Commission officials called for a flexible application of the rules and procedures to make evaluations more meaningful, given the wide variety of policy areas that evaluations cover.

There were mixed views about whether the Commission should conduct evaluations internally or involve external contractors or other institutions. Commission officials shared the view that conducting the evaluation internally allows in-house expertise to be built up and used more. Some officials were sceptical about the quality of the work and services provided by contractors. The issue of limited resources for conducting the evaluation internally was also a concern.

On quantification, a number of Commission officials thought that the lack of appropriate data is the most important problem affecting the quality of evaluations. Comparable EU-wide data are often not available and this makes it difficult to quantify impacts. Commission officials noted that there is a trade-off between the pressure to reduce the administrative burden of systematic monitoring in the original proposal and the availability of evidence when it comes to the evaluation.

6.3. Consultation

Commission officials considered stakeholder consultation as being essential for transparency and accountability purposes. Nonetheless, they shared the view that public consultation can in some cases, particularly in evaluations, be a time-consuming and resource-intensive process with limited value when it comes to the quality and quantity of evidence provided by participants.

6.4. The Regulatory Scrutiny Board

The interviews showed that Commission officials think highly of the Board’s work. Several officials saw the Board hearing as a rehearsal for the negotiations with co-legislators and as practice to explain their proposal to non-experts.

Some Commission officials expressed concerns that the Board’s demands for additional analysis and information are not proportionate to the specific initiative. Additionally, Commission staff worried that the Board does not apply its standards consistently (such as its demands for quantified information). Some officials were of the opinion that too many published impact assessments and evaluations remain of unsatisfactory quality.

6.5. The REFIT programme, Platform and Scoreboard

Commission officials recognised that the REFIT programme and Platform are important for communication purposes. However, they thought that a separate process such as the REFIT Platform is not needed, because the REFIT approach is now a mainstream part of the policy cycle and evaluations are improving. On the REFIT Scoreboard, the officials who were interviewed suggested using more qualitative examples or case studies to illustrate impacts of legislation. Moreover, they suggested being more open about which burdens and benefits can and cannot be quantified.

7. OTHER ORGANISATIONS AND BODIES

7.1. REFIT Platform

The REFIT Platform decided that it would contribute to the Commission's better regulation stocktaking exercise. The Platform's Secretariat prepared a dedicated survey to collect the views of the Platform's members on how the Platform has fulfilled its purpose and contributed to the Commission's better regulation agenda. The survey was circulated on 2 July. Members had 12 weeks to send in their contributions (until 20 September 2018). Of the Platform's 47 members (28 in the government group and 19 in the stakeholder group), 34 sent contributions (20 from the government group and 14 from the stakeholder group).

The Secretariat compiled the contributions, presenting aggregated findings from the survey and including a synthesis of proposals for future improvements. The stakeholder group agreed in its meeting on 29 June to set up a working group to consider the findings. The working group prepared a recommendation to identify the consensual or more complex issues. The Platform as a whole agreed this recommendation at its meeting on 14 March.

In the opinion the REFIT Platform members recognize that the Platform has provided a valuable contribution to the REFIT agenda and recommends its continuation with the Stakeholder group and the Government group. The Stakeholders and the Government group proposed detailed suggestions on possible improvements. The Committee of the Regions also annexed its opinion.¹⁶⁶



7.2. Task force on subsidiarity, proportionality and doing less more efficiently

The 'Task force on subsidiarity, proportionality and doing less more efficiently' submitted its report to President Juncker on 10 July 2018¹⁶⁷. The report contains nine

¹⁶⁶ REFIT Platform opinion XXII.10.a "REFIT Platform Survey – Future prospects", adopted on 14 March 2019: https://ec.europa.eu/info/files/refit-platform-recommendations-horizontal-issues-xxii10a-refit-platform-survey-future-prospects_en

¹⁶⁷ https://ec.europa.eu/commission/files/report-task-force-subsidiarity-proportionality-and-doing-less-more-efficiently_en

recommendations to bring about a new way of working to achieve ‘active subsidiarity’ and greater involvement of local and regional authorities in the Union’s policymaking. Several of the task force’s recommendations have an impact on the Commission’s better regulation policy and have been considered in the stocktaking exercise. On 23 October 2018, the Commission already set out in broad terms how it would respond to the task force¹⁶⁸.

7.3. Regulatory Scrutiny Board

The annual reports of the Regulatory Scrutiny Board were considered in this stocktaking exercise¹⁶⁹.

¹⁶⁸ COM(2018) 703: Communication entitled: *‘The principles of subsidiarity and proportionality: Strengthening their role in the EU’s policymaking’*.

¹⁶⁹ https://ec.europa.eu/info/law/law-making-process/regulatory-scrutiny-board_en