

Review NO 02

EN

Law-making in the European Union after almost 20 years of Better Regulation



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Executive summary

I The Commission's "Better Regulation" framework is a set of principles and tools that helps the European Commission to develop its policies and prepare its legislative proposals. The stated aims of Better regulation are to ensure decision-making is open and transparent; citizens and stakeholders can contribute throughout the policy and law making process; EU actions are based on evidence and understanding of the impacts; and regulatory burdens on businesses, citizens or public administrations are kept to a minimum.

II Better regulation is not about "more" or "less" EU legislation, and it is not about deregulating or deprioritising certain policy areas. Instead, it means providing solid evidence as a basis for timely and sound policy decisions. Better Regulation covers all the EU's policy areas and the whole policy cycle comprising the preparation, adoption, implementation and application of EU legislation. The key Better Regulation tools are stakeholder consultation, impact assessment of policy options, monitoring the implementation and application of laws, and evaluating EU policies and laws. Better Regulation also matters to us, as the EU's external auditor, since well-designed policies and laws also make for effective accountability and public audit.

III Better Regulation has been a key feature of EU policy making for nearly 20 years. In 2002, the Commission had already carried out the first impact assessments and public consultations for its legislative proposals. More recently, in 2015, the Commission made better regulation one of its top priorities. This was reflected in organisational changes within the Commission, work programmes with a renewed focus on key priorities ("big on big things") and a mandate to go even further with better regulation at EU level. In 2016, the European Parliament, the Council and the Commission signed an agreement on better law-making and in 2017 the Commission completed a major update of its 2015 Better Regulation guidelines and toolbox. Finally, in 2019, the Commission published the results of its stocktaking exercise of how Better Regulation has been working so far.

IV Since 2010, we have carried out several audits related to Better Regulation. This review draws on relevant results from our previous audits, international benchmarking of Better Regulation policies recently carried out by the Organisation for Economic Co-operation and Development, our analysis of documents published by the Commission and academic research, as well as our consultations with representatives of the European Parliament and Council, the Committee of the Regions, the European Economic and Social Committee and with experts in the field. Through this review,

which is not an audit, we aim to contribute to the public debate on EU law-making and Better Regulation during the current legislative period.

V We welcome the results of the Commission's stocktaking exercise and generally consider that the Commission has identified the right lessons to be learned and the most relevant areas where further improvements could be made in the direction of evidence-based decision-making. We also draw attention to a number of key challenges to be considered when reviewing the Better Regulation approach in the EU in the years to come.

VI Better regulation depends for its success on the Commission applying Better Regulation tools efficiently, effectively and consistently across policy areas. As the Commission's stocktaking exercise, and our review, confirm, there is scope for improving the way some of these tools are used. In particular, more could be done to reach out to citizens and other stakeholders through the consultation process, improve the evidence base for decision-making, and promote, monitor and enforce the implementation and application of EU law.

VII Achieving the goals of Better Regulation also depends on effective cooperation between the Commission, the European Parliament and the Council. This is why it is so essential for co-legislators to act on the commitments made in the inter-institutional agreement on better law-making that promote transparent, evidence-based decision-making. In our review, we highlight the importance of avoiding unnecessary complexity when adopting and implementing legislative proposals, making sufficient provision in legislation for collecting data on the application of policies, encouraging citizen participation in the policy cycle, and making the preparation, adoption, implementation and application of EU laws more transparent. Moreover, national parliaments and Member State authorities play a key role in transposing EU law into national law and monitoring the implementation and application of these rules on the ground.

VIII In closing, we set out some points about the way forward. Based on our previous audit results and the information we reviewed, we identified the following key challenges for the Commission and the EU co-legislators and the Member States related to achieving the goals of Better Regulation in the future:

- ensuring that EU policies and legislative initiatives are sufficiently covered by good quality consultation, evaluation and impact assessment;

- o ensuring that legislative proposals make provision for sufficient evidence to be collected to support effective monitoring and evaluation;
- o further simplifying EU legislation and monitoring its implementation and application in Member States; and
- o improving the transparency of the legislative process for citizens and other stakeholders.

Introduction

01 European Union (EU) policies and legislation affect the lives of the EU's citizens and the activities of its businesses. The EU has a substantial body of legislation that is constantly developing to reflect policy changes as EU laws are adopted, amended, repealed or expire. The Commission plays a key role in preparing EU legislation, monitoring its application and evaluating its results. The Commission's policy and law-making approach is called Better Regulation (BR).

02 The stated aims of BR are to ensure decision-making is open and transparent; citizens and stakeholders can contribute throughout the policy and law making process; EU actions are based on evidence and understanding of the impacts; and regulatory burdens on businesses, citizens or public administrations are kept to a minimum. EU action should lead to a simple, clear, stable and predictable regulatory framework for citizens and other stakeholders, while also responding to new challenges and changed political priorities. It is therefore crucial that the Commission apply its BR principles effectively, as this affects the performance of EU policies and the EU's accountability to citizens and other stakeholders.

03 BR covers all policy areas and the whole policy cycle (see [Figure 1](#)). The key BR tools are stakeholder consultation, impact assessment of policy options, monitoring the implementation and application of laws, and the evaluation of EU policies and laws. The quality of impact assessments and selected evaluations is scrutinised by the Commission's Regulatory Scrutiny Board (RSB) which is composed of four senior Commission officials and three external appointees. [Annex I](#) – Overview of the phases of the policy cycle, BR principles, objectives, tools and procedures provides a more detailed overview of how the Commission applies the BR approach at each phase of the policy cycle.

Figure 1 – Better Regulation in the policy cycle



Source: ECA based on the Commission's Better Regulation guidelines.

04 Better Regulation has been a key feature of EU policy making for nearly 20 years. In 2002, the Commission had already carried out the first impact assessments and public consultations for its legislative proposals¹. More recently, in May 2015, the Commission established an EU agenda for “Better regulation for better results”². This also led to organisational changes within the Commission, work programmes with a renewed focus on key priorities (“big on big things”) and a mandate to go even further with better regulation at EU level. In particular, on 13 April 2016, the Commission signed an Inter-institutional Agreement (IIA) on Better Law-Making with the European Parliament (EP) and the Council³ as a complement to prior agreements and declarations on Better Law-Making⁴. The IIA committed the co-legislators to cooperate in a number of actions to promote transparent, evidence-based decision making. In December 2016, the Commission published the Communication “EU Law: Better Results through Better Application”⁵ recognising the need to work with Member States to improve the implementation and application of EU law – a pre-condition for achieving policy results. Starting in 2018, the Commission carried out a “stocktaking exercise” of developments in BR and published the results in April 2019⁶. We have taken the results of that exercise as the key point of reference for this review.

05 As the EU’s independent external auditor, we promote transparency and accountability. Better Regulation also matters to us, as the EU’s external auditor, since well-designed policies and laws also make for effective accountability and public audit. Since 2010, we have published several reports on key elements of the Commission’s BR approach, in particular on impact assessments, evaluations (ex-post reviews), monitoring the application of EU law, and public consultations⁷. We have also highlighted issues with the use of these tools in a number of our reports on specific EU policies and spending programmes⁸. Through this review, we aim to contribute to the public debate on EU law-making and BR during the current legislative period. It

represents our response to the Commission's communication on the BR stocktaking exercise and identifies key challenges we may follow-up by future audits in this area. However, this is not an audit report; it is a review mainly based on publicly made information or material specifically collected for this purpose.

Review scope and approach

06 Our review draws on our own published reports, the results of the Commission’s stocktaking exercise, reports from the Commission’s RSB and Internal Audit Service (IAS), and academic publications. We also make use of publicly available information that we consider reliable, such as an international benchmarking of Better Regulation policies carried out by the Organisation for Economic Cooperation and Development (OECD) in 2018⁹. In addition, we consulted key stakeholders in order to obtain their views on the functioning of the Commission’s BR approach (see [Annex II](#) – Key stakeholders’ views on the various better regulation tools). Finally, we asked a panel of experts in the field for feedback on the preliminary results of our review (see [Annex III](#) – Experts consulted for this review).

07 The information presented in this review is based around the structure of the Commission’s communication setting out the results of its “stocktaking exercise”, namely:

- general lessons learned by the Commission in implementing BR activities;
- public participation in policy-making;
- evidence for policy-making;
- the stock of EU legislation; and
- inter-institutional cooperation in law-making.

In each section, we first explain, in a box, the key points and areas for improvement, which we then elaborate in the following paragraphs. We end our review with closing remarks on the way forward. We took account of information available up to February 2020 for this review.

The Commission's better regulation approach

General lessons learned by the Commission

Box 1

The Commission identified a number of general lessons learned from its stocktaking exercise based on public and targeted consultation (e.g. with Commission staff or inter-institutional partners), comparisons with developed countries' regulatory policies by the OECD, and a review of academic literature. These included that the rationale for continuing with BR remained strong, BR tools could be applied more efficiently without undermining their purposes, and BR needs to be a "shared effort" with other EU institutions and Member States to achieve its goals.

Overall, **the Commission in its stocktaking exercise** has identified the lessons to be learned and the most relevant areas where further improvements towards evidence-based decision-making could be made. In particular, it identifies scope to further **improve the efficiency and effectiveness of key BR activities** (i.e. consultations, impact assessments and evaluations).

We also agree that **other EU institutions** and **Member States** need to play an important role in the design and implementation of EU policies. Without their effective contributions, the goals of BR cannot be achieved.

08 Better regulation is not about "more" or "less" EU legislation, and it is not about deregulating or deprioritising certain policy areas. Instead, it means **providing solid evidence** as a basis for timely and sound policy decisions. In view of the subsidiarity principle, EU policies and programmes also need to demonstrate their added value¹⁰. Moreover, effective implementation of the BR approach also leads to more transparency and better accountability, both of which are necessary to foster citizens' trust in EU law making. Against this background, we consider that the **rationale for BR remains strong**.

09 The Commission considers in their stocktaking exercise that there remains scope to improve the **efficiency and effectiveness of BR activities**¹¹. In particular, the Commission should reduce the number of exceptions to the general rules on the need for public consultation, impact assessment and evaluation. Currently one quarter of legislative proposals lack impact assessments (for further details see paragraphs **17**

and 18) and less than a third of impact assessments benefited from adequately prepared and properly used evaluations (see paragraph 20).

10 Other **EU institutions and Members States** have a crucial role to play in designing and implementing EU policies and programmes; this is why their commitment to implementing BR successfully is so essential. In particular, effective cooperation is needed between the Commission and the EU co-legislators (i.e. the EP and the Council) in order to reach the BR goals. They must avoid unnecessary legislative complexity, provide for legal requirements on the collection of the information required for fact-based evaluations and impact assessments, carry out impact assessments before making substantial amendments to the Commission's legislative proposals, and encourage greater public participation in the EU law-making process. Moreover, **national parliaments** and **Member State authorities** play a key role in transposing EU law into national law and monitoring the implementation and application of these rules on the ground.

11 Our audits as the **EU's independent external auditor** also contribute to the goals of BR by providing observations, conclusions and recommendations on **whether and how EU policies and programmes could be implemented more effectively, efficiently and economically**. In this context, we note that the Commission has referred to our work in drawing the lessons to be learned from the stocktaking exercise, for example, special report 16/2018 on ex-post reviews.

Public participation in policy making

Box 2

Citizens and other stakeholders can take part in EU policy making through **consultation** processes launched by the Commission. They may also call on the Commission to propose new laws through the **European Citizens' Initiative**.

In our special report 14/2019 on public consultations, **we concluded that the Commission's framework for public consultations is of a high standard**, and that the preparation and implementation of the public consultations reviewed were satisfactory.

The Commission achieved the highest score in the OECD's 2018 Indicators of Regulatory Policy and Governance for stakeholder engagement¹².

However, we consider that challenges remain to further improve:

- outreach activities in public consultations through better targeting of citizens, communication measures to promote greater participation, and the criteria for the language regime to ensure that key documents are translated into as many languages as are feasible and appropriate;
- reporting on the follow-up given to the results of public consultations; and
- citizen engagement in the initiation of legislative proposals via the European Citizens Initiative.

12 In our special report 14/2019 on public consultations we highlighted particular issues related to **outreach activities to promote greater participation**. There were **shortcomings in the consultation strategies**, which explain the consultation's scope and objectives, the stakeholders to be targeted, and the planned consultation activities as well as the timing and the language arrangements. In particular, we found that the Commission set only general objectives for its consultation activities and did not always identify the target stakeholders for those activities¹³.

13 Furthermore, in one third of the cases analysed, the roadmap to inform stakeholders about its specific purpose and intended use was published less than four weeks before the public consultation started¹⁴. We concluded that **consultation activities need to be more widely publicised** in order to achieve greater visibility and enable more people to participate¹⁵. The Commission has acknowledged stakeholders' limited awareness of the opportunities for participating in policymaking and consultation activities¹⁶. The Commission also accepted our recommendation to make greater use of its representations in the Member States to engage with key

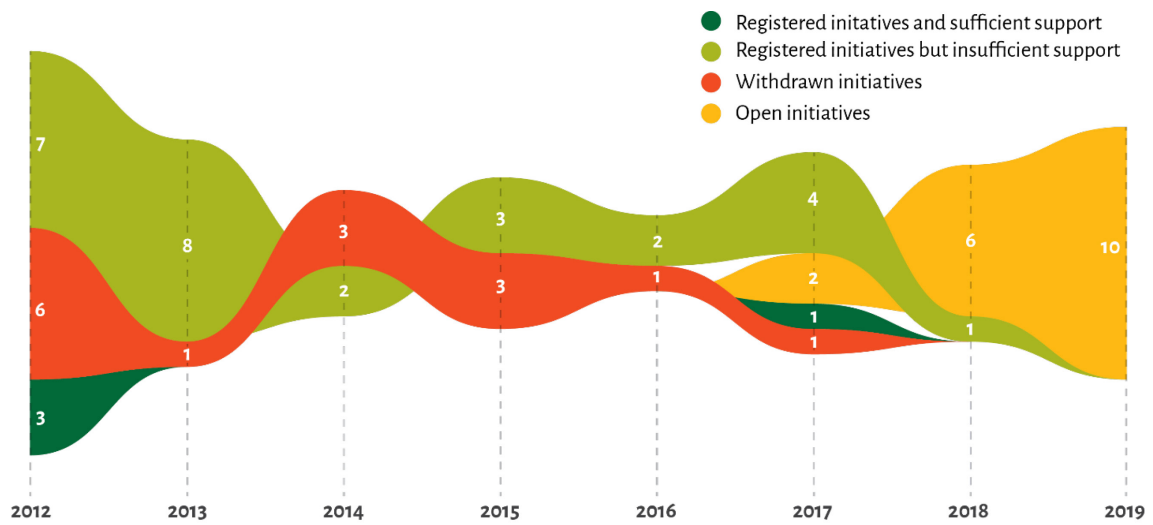
stakeholders at national, regional and local levels. At the same time, in view of the resource implications, it underlined the necessity to tailor outreach activities to the importance of the initiative¹⁷.

14 Moreover, we recommended that **key consultation documents should be translated** into all official languages for all priority initiatives and initiatives of broad public interest. The Commission accepted this recommendation partially as it considers that this would impose considerable pressure on its resources and delay the policy making process¹⁸. As the Commission notes, all public consultation questionnaires in 2018 were available in at least two languages and 71 % were translated into all official languages (except Gaelic)¹⁹. However, we found scope for clarifying the criteria used to decide whether to translate consultation documents into all official languages to ensure that initiatives of broad public interest are **accessible to all EU citizens**²⁰.

15 In addition, we found weaknesses in the Commission's **reporting on the follow up given to the public consultations**. In particular, we found cases where the Commission did not clearly explain the link between respondents' input and the options presented in the legislative proposal²¹. The Commission's stocktaking exercise also found issues in this regard. Overall, nearly 40 % of the respondents to its public consultation were dissatisfied with the reporting on the results of its public consultations²².

16 The **European Citizens Initiative**²³ allows citizens to ask the Commission directly to initiate regulatory action. The European Citizens Initiative Regulation does not require the Commission to submit a legislative proposal. The Commission remains free to follow up on an initiative or not. From the initiative's introduction in 2012 until mid-2019, four of the 64 European citizens' initiatives registered reached the necessary support of at least one million EU citizens (see **Figure 2**)²⁴. In two of these four cases, the Commission then submitted a legislative proposal²⁵. In one other case, the Commission proposed a series of non-legislative follow-up actions. In the fourth case, the Commission decided not to submit a legislative proposal since it considered the existing legal framework as appropriate. In 2019, based on a Commission proposal, the EP and the Council adopted a revised European Citizens Initiative Regulation to encourage participation and facilitate the organisation of initiatives. The new rules provide for better technical assistance to groups of organisers and allow Member States to reduce the minimum age of participants to sixteen years. These rules entered into force in early 2020²⁶.

Figure 2 – European Citizens Initiatives



Source: ECA based on Commission data (ECIs website).

Evidence for policy-making

Box 3

The Commission uses “impact assessments” to refer to the ex-ante assessment of policy options and “evaluations” to refer to the ex-post assessment of the effects of policy implementation²⁷. The Commission also carries out “ex-ante evaluations” of proposals for major spending programmes, which do not require an impact assessment. Impact assessments and evaluations are managed by the Commission Directorate-General responsible for the policy, law or spending programme concerned. The Commission has established a RSB to provide quality control of impact assessments and evaluations.

The Commission came third²⁸ highest for impact assessment²⁹ and fourth³⁰ highest for ex-post evaluation of primary law in the 2018 OECD Indicators of Regulatory Policy and Governance.

In our Special Report 16/2018 on ex-post reviews³¹, **we concluded that the Commission had designed an evaluation system which was well managed and quality controlled as a whole**³².

In our 2013 Annual Report³³, we followed up our special report 3/2010 on impact assessments³⁴, in which **we concluded that the Commission had made impact assessment an integral part of policy development and had used it to design its legislative initiatives better**. However, we consider that challenges remain to further improve:

- coverage of major initiatives by impact assessments, including programmes and activities entailing significant spending;
- aspects of the quality of impact assessments;
- the quality and timely availability of evaluations;
- the mandate of the RSB.

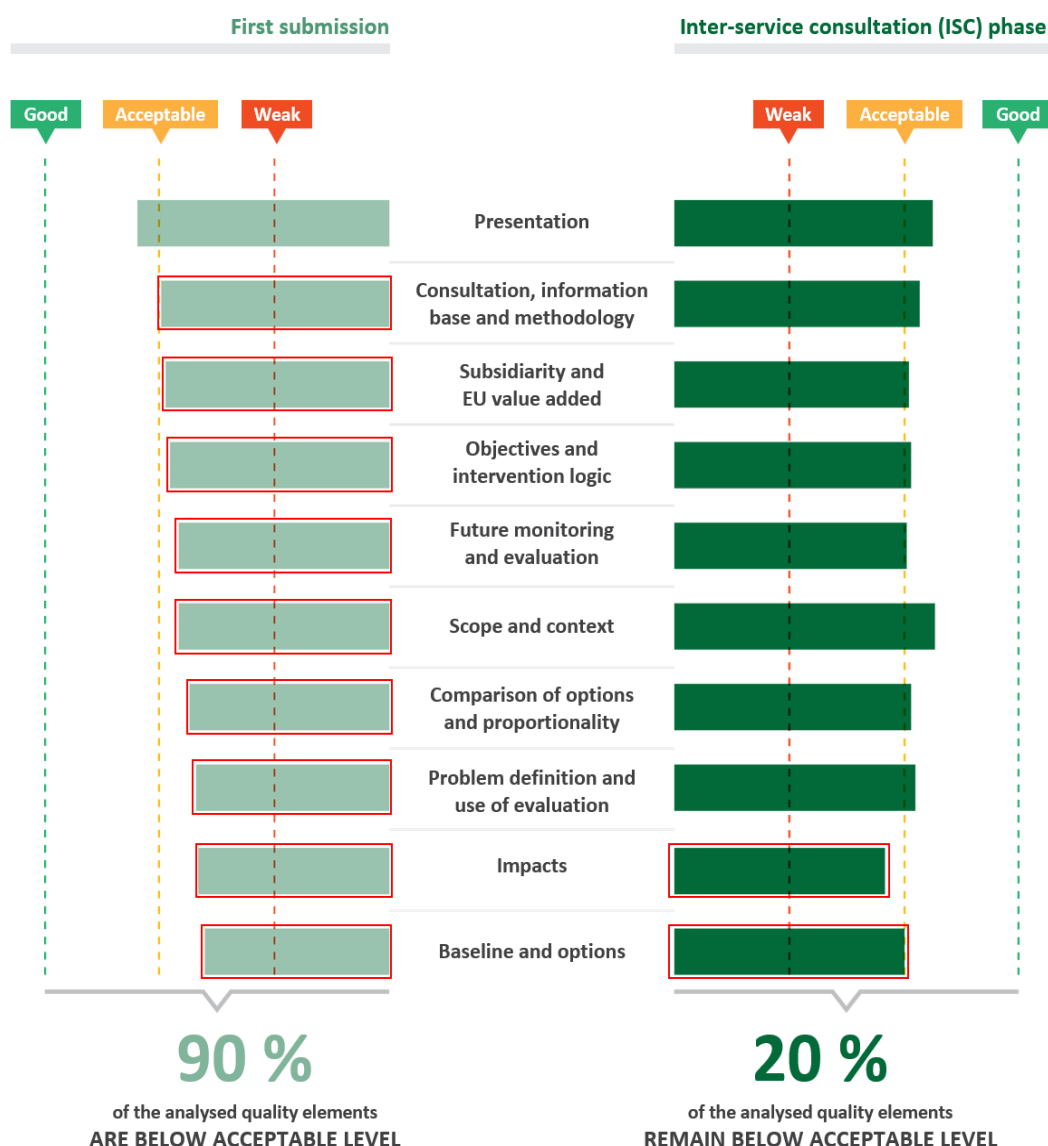
17 As a general rule, the Commission should prepare an impact assessment for **all proposals in the Commission Work Programme (CWP)**. In its stocktaking exercise, the Commission reported that for 19.5 % of its proposals in the CWPs between 2015 and 2018 there was no need for an impact assessment according to its BR requirements, and that for a further 8.5 % exceptions (e.g. for special urgency) were granted. In 7 % of cases, no reason was publicly given for the lack of an impact assessment³⁵. However, a detailed analysis referred to in the stocktaking exercise suggests that for two thirds of cases analysed there were doubts about whether the explanations were sufficient or adequate³⁶. The EP deplored the frequent absence of impact assessments

for Commission proposals, including for those featuring in the CWP³⁷. Stakeholders suggested increasing coverage by introducing lighter procedures for urgent cases or for proposals with fewer substantial effects³⁸.

18 In accordance with the Financial Regulation, proposals for **programmes and activities which entail significant spending** should be subject to ex-ante evaluation³⁹. Where a programme or activity is expected to have a significant economic, environmental or social impact, this evaluation may take the form of an impact assessment — and in this case, the Commission will also need to examine a range of options for implementation. We consider that impact assessments or ex ante evaluations should be undertaken for all major spending programmes⁴⁰.

19 Since 2002, one major challenge for the **quality of impact assessments** has been the **quantification of the costs and benefits of the different options**⁴¹. In many of our subsequent reports, we have identified shortcomings related to the availability of data and the quantification and monetising of impacts⁴². The RSB observed that, while the Commission has been improving quantification, only a quarter of impact assessments quantified costs and benefits fully⁴³. It also noted that two out of the ten quality elements analysed remained below the acceptable level even after the Commission's services had revised their impact assessments based on the RSB's quality control, before presenting them for inter-service consultation (see [Figure 3](#)). In 2016, the RSB introduced the rating "positive with reservations" for impact assessments that it considered did not need be presented to the RSB again. However, impact assessments with this new rating were less likely to improve than those that received a negative opinion and had to be presented to the RSB again⁴⁴.

Figure 3 – Impact assessment quality averages in 2018

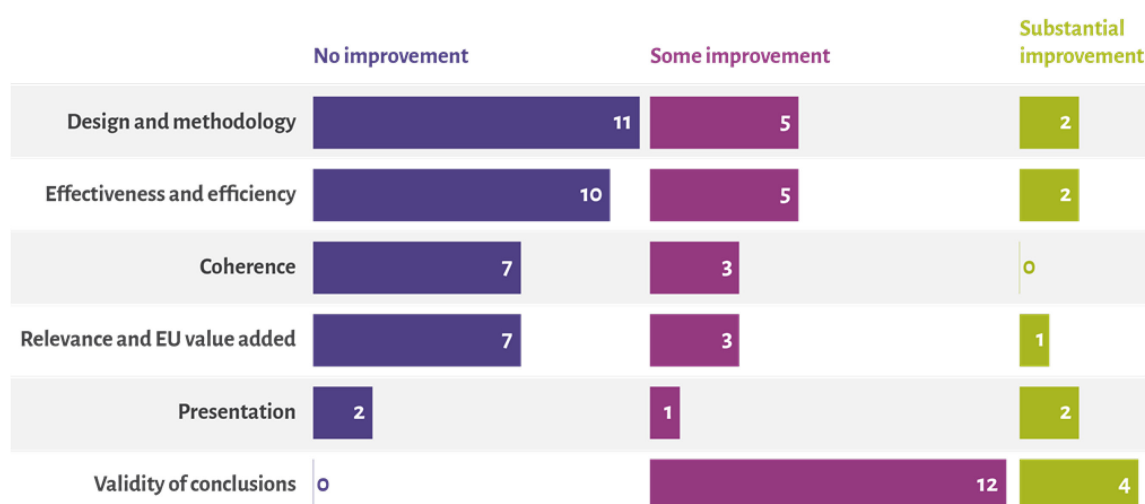


Source: ECA based on RSB [Annual Report 2018](#), chapter 1.2.

20 The Commission’s **ex-post evaluations** not only provide a means to assess the performance of EU policies, they also provide valuable input to develop the policies further. Since 2013, the Commission has committed itself to evaluating the implementation of existing legislation before drawing up impact assessments for new legislative proposals (the “evaluate first” principle)⁴⁵. However, the RSB’s analysis suggested that less than a third of impact assessments were based on adequately prepared and properly used evaluations⁴⁶. The most significant problem affecting the quality of evaluations was the **lack of appropriate data** for quantifying impacts⁴⁷. In our reports, we have repeatedly identified shortcomings related to the availability of data for assessing performance⁴⁸. As noted by the RSB, evaluation reports were often unable to answer the evaluation questions due to a lack of adequate data⁴⁹. This also

limited the scope for the Commission's Directorates General to improve the evaluation reports in order to address the RSB's concerns (see [Figure 4](#)).

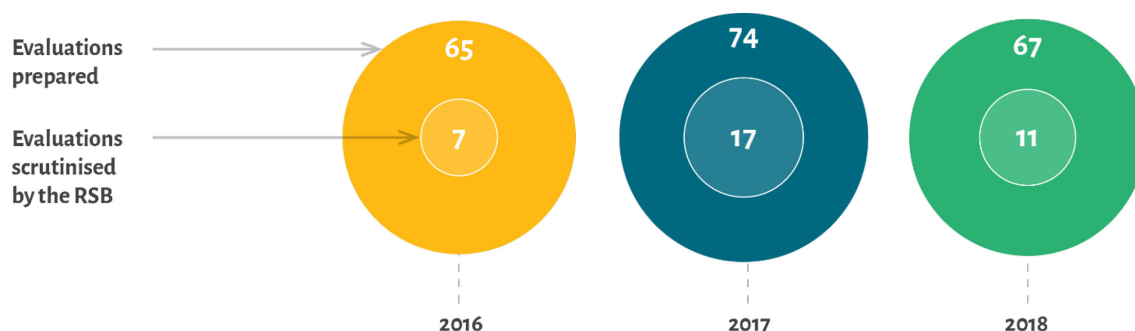
Figure 4 – Commission Directorates General often found it challenging to improve evaluation reports to accommodate RSB concerns



Source: ECA based on RSB, [Annual Report 2018](#), chapter 3.5.

21 The RSB plays an important role in ensuring the quality of the evidential base for policy-making. The board is composed of four senior Commission officials and three external appointees. Its mandate, compared to its predecessor the Impact Assessment Board, was extended to cover scrutiny of selected evaluations. However, according to the Commission's stocktaking exercise, the views of the **respondents were evenly split** about **the RSB's impartiality**⁵⁰. Those raising concerns pointed, amongst other things, at a majority of Commission officials on its board. There were proposals from some respondents to **extend further the RSB's mandate** to include the following three activities: validating the Commission's explanations for not presenting impact assessments for major initiatives⁵¹, studying the coherence between the options considered in the impact assessment and those in the legal proposal⁵², and quality controlling a greater proportion of the evaluations carried out (see [Figure 5](#))⁵³.

Figure 5 – Evaluations scrutinised by the RSB



Source: ECA based on Commission data (on evaluations prepared⁵⁴ and evaluations scrutinised by the RSB⁵⁵).

The stock of EU legislation

Box 4

The stock of EU legislation changes continually as proposals for regulations, directives and decisions are adopted and existing legislation is revised, repealed or expires.

In its work programmes for 2015-2019, the Commission planned fewer legislative initiatives than in previous years and increased their implementation rate. It also used the REFIT programme and platform to channel efforts to keep the EU's stock of legislation "fit for purpose".

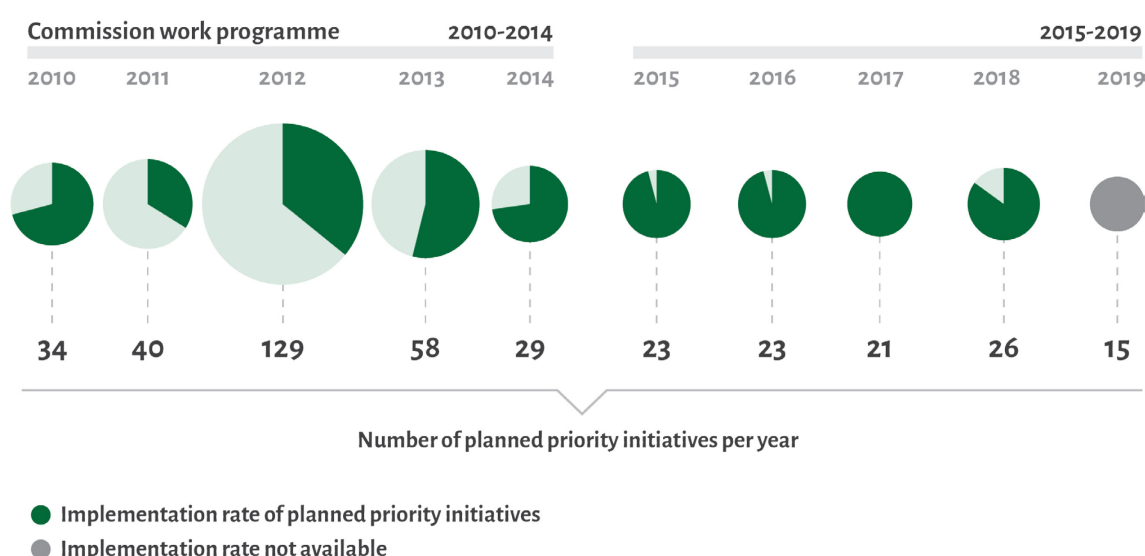
Our analysis shows that the Juncker Commission presented fewer major legislative initiatives than its predecessors, but that the implementation rate increased. Overall, the body of EU legislation remained stable between 1999 and 2019. Finally, monitoring the implementation and application of EU law in the Member States remains challenging for the Commission.

We consider that challenges remain to:

- further clarify the role of the "REFIT" initiative as an integral part of the Commission's BR approach;
- simplify EU legislation without increasing risks to compliance and performance;
- provide guidance to Member States on how to simplify and avoid unnecessarily complex and/or burdensome rules; and
- better monitor and enforce the implementation and application of EU law.

22 The Juncker Commission significantly reduced the number of major legislative proposals (“priority initiatives”). In its 2015 to 2019 work programmes the Commission planned 108 priority initiatives, a 62 % reduction compared to the 290 priority initiatives for the 2010 to 2014 work programmes. Meanwhile, between 2011 and 2017, the implementation rate for new initiatives (i.e. the share of Commission proposals which were adopted by the EP and the Council) increased progressively (see [Figure 6](#)). Overall, the body of EU legislation remained stable between 1999 and 2019 as the total number of regulations and directives adopted by the EP and Council period broadly matched the number that were repealed or expired (see [Annex IV](#) – Legislative proposals, adopted legislation, repeals and expired legislation and [Annex V](#) – Legislative output by year and policy area). At the same time, the average number of pages of EU law adopted under the 8th EP period (2014-2019) increased slightly by 4.4 % compared with the 7th EP period (2009-2014)⁵⁶.

Figure 6 – Fewer priority initiatives planned and a higher proportion implemented



Remark: The implementation rate includes priority initiatives *partially* (see Commission, [Annual Activity Report 2018 - Secretariat General](#), page 7) or *fully implemented*.

Source: ECA based on Commission Work Programmes 2010-2019 and Commission Annual Activity Reports 2013-2018.

23 A key objective of the Juncker Commission was to simplify EU legislation and reduce burdens on businesses and citizens⁵⁷. The Commission introduced a **REFIT** programme in 2012 and a REFIT platform in 2015 as part of its efforts to ensure EU legislative instruments are “fit for purpose”. Through the REFIT Platform, the Commission invited, collected and assessed suggestions on how to reduce burdens arising from EU legislation and its implementation in the Member States⁵⁸. In our special report 16/2018 on ex-post reviews, we observed that the REFIT programme’s

rationale was unclear, as were the criteria by which individual initiatives had been labelled as “REFIT”. We also recommended that the Commission avoid the perception that REFIT is in some way separate from the standard BR cycle. In this context, the Commission’s own stocktaking exercise confirmed that the REFIT programme lacked visibility⁵⁹.

24 While we fully support the Commission’s objective to **simplify legislation** and reduce burdens, care is needed to ensure that it is done in an appropriate manner. In our opinion No 6/2018 on the Common Provisions Regulation, we noted cases where simplification might come at the cost of clarity for beneficiaries and public administrations and weaken the mechanisms in place to deliver results. We have also highlighted the fact that simplification should be used to eliminate unnecessary rules or procedures rather than just to consolidate existing rulebooks. For example, in our opinion No 7/2018 on the Common Agricultural Policy, we noted that it was not clear that reducing the number of regulations would result in simplification, because in other respects, the policy would become more complex⁶⁰.

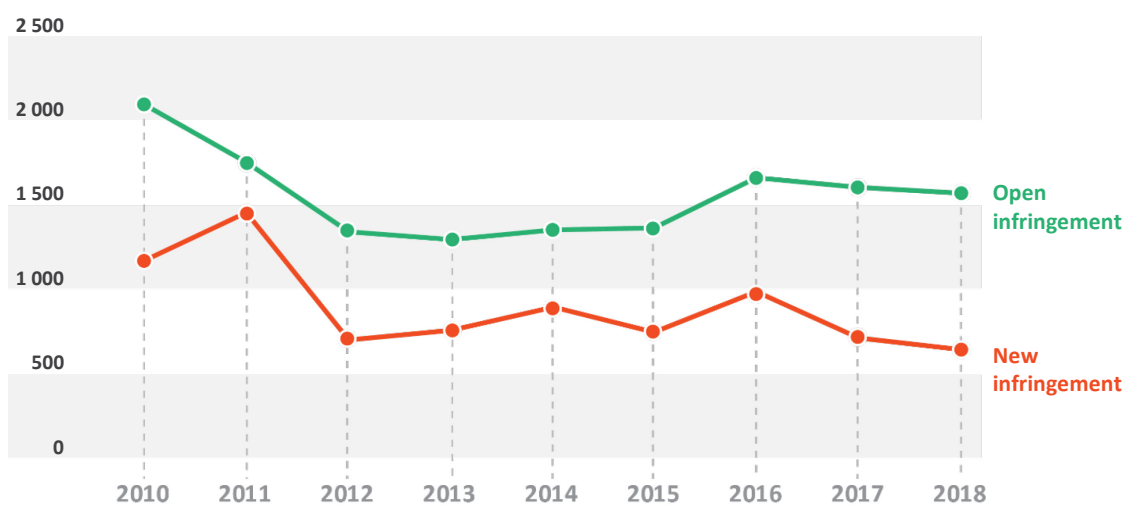
25 Legislative complexity and burdens for businesses and citizens may also arise when Member States implement EU directives. Member States’ political, legal and constitutional arrangements vary widely and this influences the way they put EU law into practice. There is also considerable variation between Member States in the number and scope of **national implementing measures** for any given EU directive. In our review on putting EU law into practice, we noted a correlation between the number of national implementing measures and the number of infringement cases launched by the Commission⁶¹. Member States acknowledge that national implementing measures may include requirements that go beyond those required by a given directive (often referred to as “gold plating”). However, they are reluctant to identify such cases in the available EU database⁶². In this context, we note that the 2016 Inter-institutional Agreement (IIA) on Better Law-Making calls upon the Member States to identify such additions either in the transposing act(s) or through associated documents. To date, only two Member States have submitted such notifications in the database.

26 The EU institutions and Member States agreed that, when notifying the Commission of national transposition measures, national authorities must, wherever justified, provide **explanatory documents** setting out how they have transposed directives into their own legislation⁶³. We have highlighted the scope for Member States to provide more and better explanatory documents⁶⁴, and the Commission has agreed that it will further explore with Member States the benefits of providing guidance on drafting and submitting explanatory documents⁶⁵. In several of our

reports, we have highlighted how shortcomings related to the consistent transposition and application of EU law in Member States have affected the performance of EU policies and programmes⁶⁶.

27 The persistently large number of infringement procedures shows that the timely and correct **implementation and application of EU law** in the Member States remains a serious challenge (see [Figure 7](#)). This has also been highlighted by the European Parliament⁶⁷.

Figure 7 – Number of new and open infringement cases



Source: ECA based on Commission Annual Reports on Monitoring the Application of Union Law and Commission infringement database extraction (for new infringement cases 2010-2012).

28 In our 2018 review on putting EU law into practice, we analysed the nature of that challenge and invited the Commission to consider further strengthening its efforts to monitor and enforce the application of EU law by, among other things:

- using the EU budget to help ensure Member States apply EU law⁶⁸; and
- developing established enforcement priorities and benchmarks for handling infringement cases into an overall framework for managing oversight activities.

Inter-institutional cooperation in law-making

Box 5

The quality of EU laws largely depends on good inter-institutional cooperation.

In the Inter-institutional Agreement (IIA) on Better Law-Making signed on 13 April 2016 the EP, the Council and the Commission committed themselves to the utmost transparency of the legislative process, so that citizens maintain trust in the EU's legislative process.

However, a number of commitments have not yet been delivered.

We consider that challenges remain to further improve:

- the assessment of amendments made by the co-legislators to the Commission's legislative proposals during the procedure; and
- transparency on certain aspects of the legislation procedure (e.g. "the trilogue meetings" and "lobbying").

29 The IIA requires the EP and the Council to carry out impact assessments in relation to their **"substantial" amendments to Commission proposals**, when they consider this appropriate and necessary for the legislative process⁶⁹. There is, however, no agreed definition of what constitutes a "substantial" amendment. Under the IIA, each Institution can decide on its own whether an amendment is "substantial". The Council has not yet prepared any assessments of its own amendments and the EP, through its Directorate-General for Parliamentary Research Services (EPRS), has published three such assessments since 2016. Much of the EPRS's work on impact assessments relates to appraising the quality of the Commission's impact assessments (142 cases since 2016)⁷⁰. We consider that it remains a challenge to meet the commitments under the IIA which ultimately aim at avoiding gaps and overlaps in the impact assessment activities of the co-legislators to support evidence-based decision-making.

30 There is already a considerable level of **transparency for the EU's legislative process**, as citizens and other stakeholders can follow the progress of legislative proposals, at least to some extent, through a number of different public websites. Moreover, in the 2016 IIA, the three institutions agreed to establish a joint public database on the state of play of all legislative files⁷¹. This database is still in the process of being developed. However, as provided for in the IIA, a joint register of delegated acts was set up in December 2017⁷². This gives citizens access to various steps in the lifecycle of delegated acts⁷³.

31 The Commission considers that issues related to the trilogue meetings and the public register for “interest representatives” are not included in better regulation, as a framework to gather evidence for decision-making. Nevertheless, in reviewing the evidence supporting the Commission’s stocktaking exercise, we noted stakeholder concerns⁷⁴ about the lack of transparency in the negotiations between the EP, the Council and the Commission on legislative texts when they are adopted (i.e. “**trilogue meetings**”⁷⁵). In 2016, the European Ombudsman called for the publication of a “trilogue” calendar, summary meeting agendas and successive versions of the “four-column document” showing the initial positions of the three institutions and the compromise text, as it evolves during the discussions⁷⁶. Access to the successive versions of such a four-column document would enable the public to better understand how a final text was arrived at. In its reply to the Ombudsman, the Commission confirmed that it would have no objection to publishing such information⁷⁷. However, this would require the consent of both co-legislators.

32 In 2018, the Court of Justice of the European Union (CJEU) ruled that no general presumption of non-disclosure can be upheld for such provisional compromise texts⁷⁸. This ruling implies that such information should, as a general rule, be available to the public⁷⁹. However, to date, the “four-column documents” are not regularly published. The publication of such information about amendments by the EP and the Council to the Commission’s legislative proposal would help to improve public accountability for decisions taken.

33 We also note that the EP and the Commission have jointly operated a public register for “interest representatives” (i.e. **lobbyists**) since 2011 and that the Council has been an observer to the current scheme since 2014⁸⁰. On 28 September 2016, the Commission presented its proposal for a new IIA on a mandatory Transparency Register covering the EP, the Council and the Commission. The proposal aimed to strengthen the framework for dealing with lobbyists and make meetings with lobbyists conditional on their registration. No final agreement has yet been reached on the proposal for a mandatory inter-institutional Transparency Register⁸¹.

Closing remarks on the way forward

34 The Commission has taken stock of how well the various better regulation tools and processes are functioning, identified lessons learned and recognised opportunities for further improvement. Based on our previous audit results and the information we reviewed, we identified the following key challenges for the Commission and the EU co-legislators and the Member States related to achieving the goals of Better Regulation in the future:

- ensuring that EU policies and legislative initiatives are sufficiently covered by good quality consultation, evaluation and impact assessment;
- ensuring that legislative proposals make provision for sufficient evidence to be collected to support effective monitoring and evaluation;
- further simplifying EU legislation and monitoring its implementation and application in Member States; and
- improving the transparency of the legislative process for citizens and other stakeholders.

Annexes

Annex I – Overview of the phases of the policy cycle, BR principles, objectives, tools and procedures⁸²



Stakeholder consultation



Impact assessments

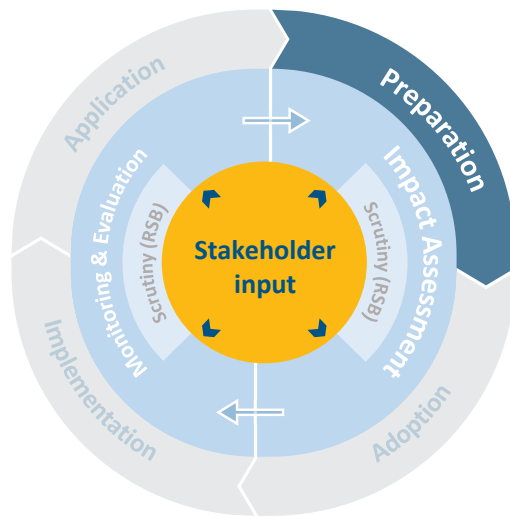


Evaluations



Implementation and application of EU law

Key steps and requirements for stakeholder consultation



Stakeholder consultation is an important instrument when **collecting information** for evidence-based policymaking. Stakeholders' views, practical experience and data will help deliver higher quality and more credible policy initiatives, evaluations and fitness checks. The Commission publishes detailed information at an early stage about the objectives of the underlying initiative as well as about the consultation activities available on its "Have your say" web portal where feedback can also be given.

Political Validation and public and targeted consultations

A consultation strategy must be established for each initiative and evaluation.

The strategy should outline the language coverage of consultation activities. It also should cover targeted consultation activities and public consultation (for impact assessments, evaluations, fitness checks, Green Papers).

Public consultations on priority initiatives must be made available in all official EU languages. All other public consultations need to be made available in English, French and German at least. Additional translations must be provided for consultations on initiatives of broad public interest and justified in the consultation strategy.

Interservice Group (ISG)

The lead Directorate-General (or Secretariat-General (SG) for important initiatives) establishes the Interservice Group (ISG) and invites interested services to participate.

Where an ISG is required, it discusses and finalises the stakeholder consultation strategy and consultation documents. If no ISG exists, the documents and strategy are finalised by the lead Directorate-General with the SG.

Carrying out consultation activities

The lead Directorate-General implements the consultation strategy.

Public consultations are published on the "Contribute to law making" portal after a green light from the SG. Public consultations are open for a response period of 12 weeks.

Targeted consultation addressing specific well-defined stakeholder groups might complement public consultations.

Roadmap or inception impact assessment, feedback

Where applicable, the lead Directorate-General must prepare an inception impact assessment or roadmap together with the Secretariat-General.

The roadmap or inception impact assessment must present the outline of the stakeholder consultation strategy.

The Secretariat-General publishes the inception impact assessment or roadmap, which launches a 4-week period in which citizens and stakeholders can provide feedback.

The lead Directorate-General must assess any stakeholder feedback and integrate it into its preparatory work as appropriate, which may include an update of the consultation strategy.

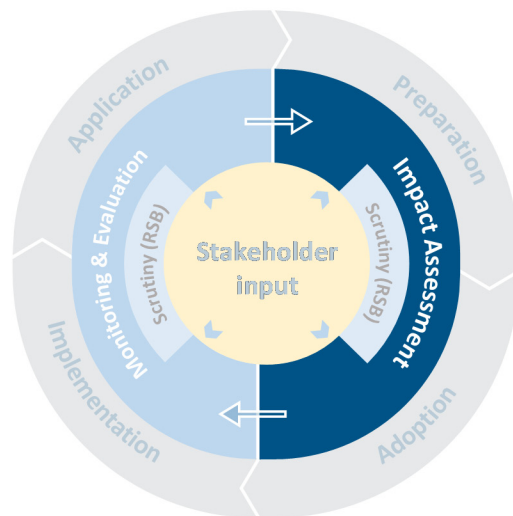
Reporting, The synopsis report

The lead Directorate-General analyses the results of the various consultation activities and, ideally, publishes a factual summary report providing information such as details of participants and the main views expressed.

The lead Directorate-General prepares a synopsis report describing the overall results of the consultation activities and feedback received on the roadmap or inception impact assessment.

The synopsis report (SWD) accompanies the initiative through interservice consultation and adoption and it should be published on the consultation page. The report is presented as an annex to the IA report or the evaluation SWD when these are prepared.

Key steps, requirements and quality control for impact assessments



Impact assessments (IAs) examine whether there is a need for EU action and analyse the possible impacts of available solutions. These are carried out during the preparation phase, before the Commission finalises a proposal for a new law. They provide evidence to inform and support the decision-making process. Impact assessment is a key BR instrument, which supports the Commission and the legislator in the preparation and adoption of new initiatives.

Political Validation

The lead Directorate-General must enter the initiative into the Planning tool a minimum of 12 months before the expected date of adoption by the Commission.

Political validation is handled in the Planning tool and must be sought from the lead Commissioner, relevant Vice-President and the First Vice-President.

Inception impact assessment, feedback

The lead Directorate-General must prepare an inception impact assessment together with the Secretariat-General (draft uploaded into the Planning tool).

The Secretariat-General (SG) publishes the inception impact assessment, which launches a 4-week period in which stakeholders can provide feedback.

The lead Directorate-General must assess any stakeholder feedback and integrate it into its preparatory work as appropriate.

Scrutiny by RSB

RSB Meeting with the Commission services is based on the issues raised in the quality checklist.

The RSB may issue a positive or negative opinion (usually within 2 days of its meeting).

The Directorate-General must resubmit a revised impact assessment report if it receives a negative initial opinion.

The RSB will issue a maximum of two opinions.

Carrying out evaluations and submission to Regulatory Scrutiny Board

The lead Directorate-General (or SG for important initiatives) establishes the Interservice Group (ISG) and invites interested services to participate.

The ISG collectively prepares the various chapters of the impact assessment report starting with the problem definition.

The ISG must review the final draft of the IA report before it is submitted to the RSB.

The draft impact assessment report and other relevant documents must be submitted to the RSB at least 4 weeks before the scheduled meeting.

The RSB will issue a quality checklist to the lead Directorate-General a few days before the scheduled meeting, to prepare and structure the discussion with the RSB.

IA report

The impact assessment report is in the form of a staff working document (SWD) and must be subject to formal consultation by the Commission services.

The interservice consultation must include the initiative, the impact assessment report and the opinion(s) of the RSB.

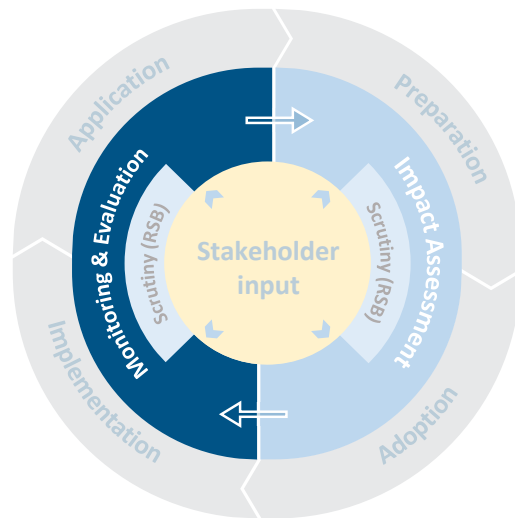
The impact assessment report will accompany the initiative during the process of adoption by the Commission.

The Commission's proposal and accompanying impact assessment are published on-line and stakeholders will have the opportunity to provide feedback over a period of 8 weeks.

Adoption and Follow-up

The lead Directorate-General must compile a summary of the feedback received and transmit it to the Legislator.

Key steps, requirements and quality control for evaluations



Evaluations and fitness checks

assess the performance of existing policies, programmes and legislation. The Commission defines evaluations as an evidence-based judgement of the extent to which an intervention has been effective and efficient, been relevant given the needs and its objectives, been consistent, both internally and with other EU policy interventions, and achieved EU added value.

Political Validation

Lead Directorate-General must introduce the evaluation in the planning tool at least 12 months before publication of the SWD.

Relevant Director General validates it in the planning tool.

Lead Directorate-General adds the evaluation to its five-year rolling evaluation plan.

Roadmap

Lead Directorate-General must prepare an evaluation roadmap which covers the approach, context, purpose and scope of the evaluation.

SG and lead Directorate-General agree the roadmap, which also reflects decisions on exceptions. SG publishes the roadmap.

Stakeholders have 4 weeks to provide feedback. Lead Directorate-General must assess feedback and integrate into further work.

Conducting the evaluation/ Scrutiny by Regulatory Scrutiny Board

Lead Directorate-General, supported by the Interservice Group (ISG), carries out the evaluation. They discuss and monitor progress, including deliverables from contractors.

Consultation strategy is developed and followed; 12-week public consultation is launched.

SWD and other relevant documents are submitted to the RSB at least 4 weeks before the meeting.

The RSB will issue a quality checklist to the lead Directorate-General a few days before the scheduled meeting, to prepare and structure the discussion with the RSB.

RSB Meeting with the Commission services.

RSB may issue a positive or negative opinion.

Designing the evaluation

Lead Directorate-General must establish an Inter Service Group (ISG) which includes a member from its evaluation function. The ISG must steer the evaluation and be involved at all key stages.

This may include discussion of any draft associated report or communication to the EP and Council.

Lead Directorate-General and ISG discuss and finalise the evaluation design, based on the roadmap and any associated feedback.

An upstream meeting with the RSB may also discuss design.

The approach to stakeholder consultation, data collection and analysis should be carefully considered in the design phase.

Staff Working Document

The Staff Working Document (SWD) is a key deliverable of the evaluation process together with the executive summary.

Lead Directorate-General must write the SWD (and any executive summary), in consultation with the ISG.

SWD should be around 50-60 pages. The document should be self-standing (no need to read supporting materials to understand its content).

Evaluation conclusions must pinpoint lessons learned, thereby providing input to future policy development.

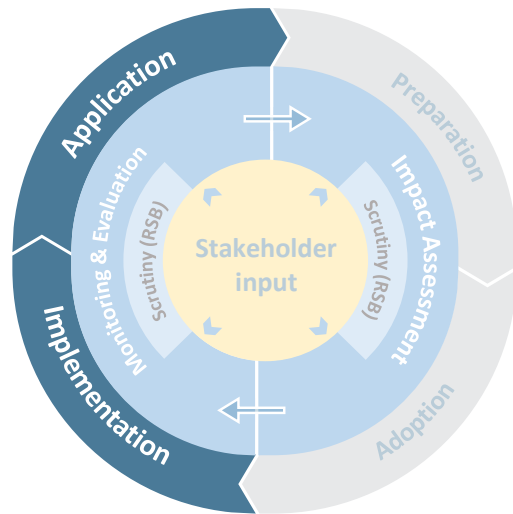
Publication and Follow-up

Lead Directorate-General must identify appropriate follow up actions and feed them into the decision-making cycle.

Lead Directorate-General should communicate the evaluation findings as appropriate to suit different audiences. It should present the evaluation findings in its Annual Activity Report and incorporate appropriate follow-up actions into future work, including its Annual Management Plan.

Lead Directorate-General must publish roadmap, SWD and as applicable: technical specifications, associated final deliverable(s), RSB opinion.

Key steps, requirements and quality control for the implementation and application of EU law



Putting EU law into practice is essential for delivering results for citizens and protecting their rights and freedoms. Member States must fulfil their obligations under EU law, including incorporating relevant EU legal acts into national law (“implementation”) as well as applying them in their jurisdiction (“application”). The Commission checks whether Member States notified it of their national implementing measures by the deadline (“notification”), completely transposed the provisions of the directive into national law (“transposition”), and accurately reflected all the provisions of the directive (“conformity”).

Transposition of EU law

Member States transposing directives into national law can choose the form and methods for doing so, but are bound by the terms of the directive as to the result to be achieved and the deadline by which transposition should take place.

An implementation plan can accompany the Commission’s legislative proposal. It identifies the technical, compliance and timing challenges Member States face and lists the Commission’s support actions.

Member States, when notifying national transposition measures to the Commission, have to provide documents, in justified cases, explaining how they have transposed directives into their law.

The Commission carries out transposition checks to ensure that the national transposition measures of which it has been notified by the Member State cover each obligation contained in each article and sub-article/paragraph of the directive, as well as annexes where relevant.

Furthermore, the Commission carries out conformity checks to assess the compatibility of the national implementing measures with the Directive’s provisions/obligations, including definitions.

Monitoring the application of EU law

Article 17 of the Treaty on European Union (TEU) states that the European Commission is the guardian of the EU treaties. It thus has the task of monitoring the application of EU primary and secondary law and ensuring its uniform application throughout the EU. It gathers information to monitor EU countries’ compliance.

The Single Market Scoreboard aims to give citizens and businesses an overview of the practical management of the Single Market. It informs them about the performance of Member States and covers the results that have been achieved, the feedback received and conclusions drawn, providing a basis for future action.

The Commission’s Annual Report on Monitoring the Application of Union Law is a high-level report that contains two annexes providing detailed information and charts on each of the Member States and each of the relevant policy areas.

Implementation of EU law

Implementation of EU law is the procedure by which EU law is applied at national and/or subnational (regional) levels.

Enforcement of EU law

In the case of a formal infringement procedure, the Commission sends a letter of formal notice under Article 258 of the TFEU to the Member State, requesting an explanation within a given time limit.

If the Member State does not reply satisfactorily, the Commission issues a reasoned opinion asking the Member State to comply within a given time limit.

If the Member State does not comply with the reasoned opinion, the Commission may decide on a referral to the CJEU under Article 258 of the TFEU. For failure to notify cases, the Commission may propose financial penalties under Article 260(3) of the TFEU at this stage.

If the CJEU finds the Member State has breached its obligations under EU law, the CJEU orders the Member State to take the necessary action to comply and the Commission checks the Member State’s compliance with the ruling of the CJEU.

If the Member State does not take the necessary steps to comply, the Commission may continue the infringement procedure under Article 260(2) of the TFEU by sending a letter of notification to the Member State and referring the case back to the CJEU. In such cases, the Commission can propose, and the CJEU can impose, financial sanctions in the form of a lump sum and/or penalties per day or another specified period.

Annex II – Key stakeholders' views on the various better regulation tools

The table below indicates the consolidated view of the European Economic and Social Committee and the Committee of the Regions on how the various BR tools work in practice and how they contribute to achieving the objectives of better EU law-making. The European Parliament's reply could not be included as it was presented in a different format and the Council did not accept the invitation to participate.

	Yes, very satisfied	Yes, satisfied	Neither satisfied nor dissatisfied	No, dissatisfied	No, very dissatisfied
Opening up policymaking					
Planning initiatives and political validation				X	
Feedback opportunities (to roadmaps and inception impact assessments)			X		
Stakeholder consultations (public consultations)			X		
Contributing to law-making “Have your say” portal		X			
Better tools for better policies					
Impact Assessments			X		
Evaluations		X			
Regulatory Scrutiny Board		X			
Subsidiarity and proportionality principle			X		
Transposition and Implementation of EU law in Member States			X		
Keeping the existing stock of legislation fit for purpose					
REFIT programme			X		
Refit Platform				X	
Better regulation as a shared agenda					
Inter-institutional Agreement on Better Law-Making			X		
Monitoring the application of EU law			X		

Remark: The final value per category is based on the views received (arithmetic average of the 5-point scale); non-opinion cases were excluded from the calculation.

Annex III – Experts consulted for this review

Name	Title	Organisation
Christiane Arndt-Bascle	Head of Programme at the Public Governance Directorate	OECD
Benjamin Gerloff	Analyst at the Public Governance Directorate	
Leila Kostinen	Chair of the Finnish Council of Regulatory Impact Analysis and Chair of RegWatchEurope	Finnish Council of Regulatory Impact Analysis and RegWatchEurope
Wim Marneffe	Associate Professor at the Faculty of Business Economics and manager of the research group economics and public policy	Hasselt University
Dimiter Toshkov	Associate Professor at the Institute of Public Administration, Faculty of Governance and Global Affairs	Leiden University

Annex IV – Legislative proposals, adopted legislation, repeals and expired legislation

Year (*)	Legislative proposals by the Commission for			Legislative proposals withdrawn by the Commission	Adopted legislative acts			Repeals and expiry of legislative acts			Difference between adopted and repealed or expired legislative acts
	Ordinary legislative procedure (1)	Special legislative procedure (2)	TOTAL	Regulations and Directives (3)	Ordinary legislative procedure (4)	Special legislative procedure (5)	TOTAL	Ordinary legislative procedure (6)	Special legislative procedure (7)	TOTAL	TOTAL
	EP and Council Regulations and Directives	Council Regulations and Directives		EP and Council Regulations and Directives	EP and Council Regulations and Directives	Council Regulations and Directives		EP and Council Regulations and Directives	Council Regulations and Directives		
1999	36	175	211	0	28	195	223	2	335	337	-114
2000	84	204	288	11	55	204	259	7	249	256	3
2001	70	155	225	6	57	170	227	2	201	203	24
2002	65	176	241	12	72	162	234	8	187	195	39
2003	94	177	271	3	79	185	264	9	118	127	137
2004	65	187	252	119	78	206	284	7	132	139	145
2005	71	146	217	3	45	128	173	3	240	243	-70
2006	101	212	313	33	83	200	283	26	227	253	30
2007	91	142	233	4	40	140	180	7	168	175	5
2008	110	149	259	15	100	159	259	10	278	288	-29
2009	56	94	150	11	138	124	262	50	309	359	-97
2010	98	10	108	20	49	27	76	35	148	183	-107
2011	157	20	177	14	71	40	111	17	166	183	-72
2012	84	7	91	12	63	35	98	18	68	86	12
2013	119	9	128	7	102	27	129	82	129	211	-82
2014	68	1	69	48	134	62	196	32	72	104	92
2015	48	4	52	47	56	67	123	60	134	194	-71
2016	108	20	128	6	69	53	122	45	115	160	-38
2017	75	8	83	8	66	65	131	20	25	45	86
2018	128	18	146	10	67	79	146	40	39	79	67
2019(**)	16	3	19	6	97	31	128	28	65	93	35
Total	1 744	1 917	3 661	395	1 549	2 359	3 908	508	3 405	3 913	-5

* 1 January - 31 December

** 1 January - 18 September

(1) Corrigenda and amended proposals are excluded, Proposals of implementing Council acts are included. Proposals not containing metadata indicating the type of procedure; those are also excluded.

(2) Corrigenda and amended proposals are excluded. Non-legislative procedure and ordinary legislative procedure (COD) are excluded. Proposals of implementing Council acts are included.

(3) Corrigenda and amended proposals are excluded. Non-legislative procedure is excluded.

(4) Corrigenda are excluded.

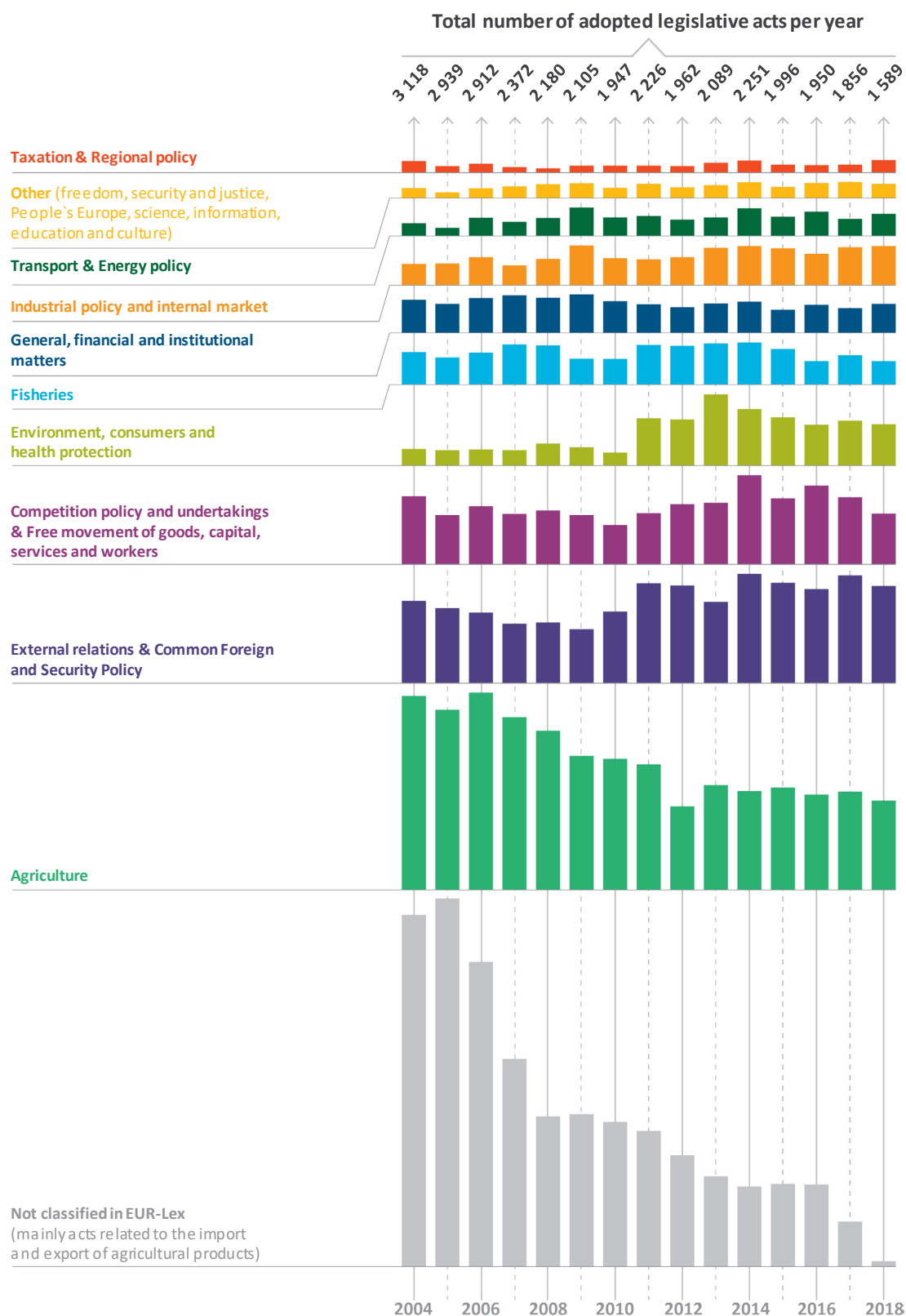
(5) Corrigenda are excluded. Non-legislative procedure and ordinary legislative procedure (COD) are excluded. Includes Council regulations and directives (incl. implementing regulations).

(6) Corrigenda are excluded.

(7) Corrigenda are excluded. Includes Council regulations and directives (incl. implementing regulations). Non-legislative procedure is excluded.

Source: Publications Office.

Annex V – Legislative output by year and policy area



Remark: Figures include directives, regulations and decisions under ordinary legislative procedure, special legislative procedure and non-legislative procedure. Corrigenda and amended acts are included as well as implementing and delegated acts.

Source: ECA EUR-Lex extraction based on the work of Toshkov, D. (2019) 'Legislative Productivity of the EU, 2004-2019', Online presentation, available at: http://www.dimiter.eu/Visualizations_files/Eurlex2019.html.

Acronyms and abbreviations

BR: Better regulation

CoR: Committee of the Regions

CWP: Commission Work Programme

EESC: European Economic and Social Committee

EP: European Parliament

EPRS: European Parliament Research Service

OECD: Organisation for Economic Co-operation and Development

REFIT: Regulatory fitness and performance programme

RSB: Regulatory Scrutiny Board

Glossary

Better Regulation: A set of principles for designing EU policy and laws in a transparent, evidence-based manner with citizen and stakeholder involvement, covering the whole policy cycle from design to implementation, as well as evaluation and possible revision.

Consultation: A process of gathering information, feedback, advice or evidence from another body, experts or stakeholders.

Delegated Act: A non-legislative act adopted by the Commission, using powers delegated to it by a legislative act, which supplements or amends certain non-essential elements of that legislative act.

Evaluation: An evidence-based assessment, undertaken by or on behalf of the Commission, of the extent to which an EU action has been effective, efficient, relevant to needs, and achieved EU added value.

Ex-post review: Policy tool resulting in a document or set of documents presenting a retrospective stocktaking of one or all aspects of an EU regulatory intervention (be it one or more legislative acts), with or without evaluative elements.

Ex-ante evaluation: Ex ante evaluations supporting the preparation of programmes and activities shall be based on evidence on the performance of related programmes or activities and shall identify and analyse the issues to be addressed, the added value of Union involvement, objectives, expected effects of different options and monitoring and evaluation arrangements. For major programmes or activities that are expected to have significant economic, environmental or social impacts, the ex ante evaluation may take the form of an impact assessment

Fitness Check: A comprehensive evaluation of a group of actions related in some way (usually through a common set of objectives) to identify and quantify any synergies or inefficiencies between actions, and their cumulative impact in terms of costs and benefits.

Gold-Plating: The practice whereby national governments transposing an EU directive set rules or regulatory requirements that go beyond what is necessary to comply with the requirements of that directive.

Impact Assessment: A detailed analysis of a problem, including its underlying causes, the need for EU action and the advantages and disadvantages of potential solutions.

Implementing Act: A legally binding act setting out measures, conditions and procedures to ensure that EU law is applied uniformly across Member States.

Inception Impact Assessment: A first description of a problem and possible policy options to address it, along with an overview of the different planned stages for developing the initiative, including any impact assessment work and stakeholder consultation.

Interservice Consultation: A procedure whereby a Commission directorate-general formally requests opinions on a proposal or draft from other directorates-general concerned.

Ordinary Legislative Procedure: The adoption by the European Parliament and the Council of a regulation, directive or decision following a proposal from the European Commission.

REFIT: The Commission's regulatory fitness and performance programme, which reviews existing legislation and measures to ensure they deliver the expected results at minimum costs and regulatory burden.

Regulatory Impact Assessment: Defined by the OECD as the systematic process of identification and quantification of benefits and costs likely to flow from regulatory or non-regulatory options for a policy under consideration.

Roadmap: A project plan setting out the steps needed to achieve a particular goal.

Staff Working Document: A non-binding document in which a Commission department sets out its position on a given policy issue.

Transposition: The process whereby EU Member States incorporate EU directives into national law.

Trilogue: Discussion of a legislative proposal between representatives of the Parliament, Council and Commission.

ECA team

This review was produced by Audit Chamber V – headed by ECA Member Tony Murphy – which has a focus in the areas of financing and administering the Union.

The review was led by ECA Member Pietro Russo, supported by Chiara Cipriani, Head of Private Office and Benjamin Jakob, Private Office Attaché; Alberto Gasperoni, Principal Manager; Michael Spang, Head of Task; Attila Horvay-Kovacs, Tomasz Plebanowicz, Auditors; Zsolt Varga provided data analysis support, Alexandra Mazilu and Jesús Nieto Muñoz visualisation support and Fiona Urquhart linguistic support.

Notes

- ¹ Commission, [Communication Towards a reinforced culture of consultation and dialogue - General principles and minimum standards for consultation of interested parties by the Commission](#); COM(2002) 704 final, complemented by COM(2012) 746 and accompanying SWD(2012) 422 and by COM(2014) 368.
- ² Commission, [Better regulation for better results - An EU agenda](#), COM(2015)215, 2015.
- ³ [Inter-institutional Agreement between the European Parliament, the Council of the European Union and the European Commission on Better Law-Making](#); OJ L 123, 12.05.2016.
- ⁴ For example: Joint Political Declaration of 27 October 2011 of the European Parliament, the Council and the Commission on explanatory documents or Inter-institutional Agreement of 22 December 1998 on common guidelines for the quality of drafting of Community legislation.
- ⁵ Commission, [EU Law: Better Results through Better Application](#), C(2016) 8600 final of 21.12.2016.
- ⁶ Commission, [Better regulation: taking stock and sustaining our commitment](#), 2019.
- ⁷ European Court of Auditors, special report 3/2010: Impact Assessments in the EU institutions: do they support decision making? (followed up in 2016); [special report 16/2018: Ex-post review of EU legislation: a well-established system, but incomplete](#); Review: Putting EU law into practice; special report 14/2019 'Have your say!': Commission public consultations engage citizens, but fall short of outreach activities.
- ⁸ European Court of Auditors, [special report 6/25: The integrity and implementation of the EU ETS](#), 2015, paragraph 75; special report 34/2016, [Combating Food Waste: an opportunity for the EU to improve the resource-efficiency of the food supply chain](#), paragraph 45; special report 10/2017: [EU support to young farmers should be better targeted to foster effective generational renewal](#), paragraph 20; special report 10/2018: [Basic Payment Scheme for farmers](#), 2018, paragraph 34, special report 24/2018, [Demonstrating carbon capture and storage and innovative renewables at commercial scale in the EU: intended progress not achieved in the past decade](#), paragraph 58.
- ⁹ OECD, [OECD Regulatory Policy Outlook 2018](#), 2018.
- ¹⁰ European Court of Auditors, [Briefing paper: The Commission's proposal for the 2021-2027 Multiannual Financial Framework](#), 2018.
- ¹¹ Commission, [Taking Stock of the Commission's Better Regulation Agenda](#), SWD(2019)156, chapter 7 "Conclusions".
- ¹² The indicators of Regulatory Policy and Governance (iREG) measure the implementation of better regulation practices as advocated by the OECD and its member countries; [OECD Regulatory Policy Outlook 2018](#), 2018, figure 2.6 and 2.7.
- ¹³ European Court of Auditors, special report 14/2019 'Have your say!': [Commission public consultations engage citizens, but fall short of outreach activities](#), paragraph 113.
- ¹⁴ European Court of Auditors, special report 14/2019 'Have your say!': [Commission public consultations engage citizens, but fall short of outreach activities](#), paragraph 35-50.
- ¹⁵ European Court of Auditors, special report 14/2019 'Have your say!': [Commission public consultations engage citizens, but fall short of outreach activities](#), paragraph 59-60 and 114.
- ¹⁶ Commission, [Taking Stock of the Commission's Better Regulation Agenda](#), SWD(2019)156, chapter 3.4.
- ¹⁷ European Court of Auditors, special report 14/2019 'Have your say!': [Commission public consultations engage citizens, but fall short of outreach activities](#), 2019, Recommendation 3.
- ¹⁸ European Court of Auditors, special report 14/2019 'Have your say!': [Commission public consultations engage citizens, but fall short of outreach activities](#), Recommendation 4.
- ¹⁹ Commission, [Taking Stock of the Commission's Better Regulation Agenda](#), SWD(2019) 156, chapter 3.4.
- ²⁰ European Court of Auditors, 'Have your say!': [Commission public consultations engage citizens, but fall short of outreach activities](#), 2019, Recommendation 4.
- ²¹ European Court of Auditors, special report 14/2019 'Have your say!': [Commission public consultations engage citizens, but fall short of outreach activities](#), paragraph 108.
- ²² Commission, [Taking Stock of the Commission's Better Regulation Agenda](#), SWD(2019) 156, chapter 4.2 in Annex II.
- ²³ Article 11 of the Treaty on European Union (TEU).
- ²⁴ https://europa.eu/citizens-initiative/home_en
- ²⁵ The two cases are: "Ban glyphosate and protect people and the environment from toxic pesticides" and the "Water is a public good, not a commodity!" initiative.
- ²⁶ <https://data.consilium.europa.eu/doc/document/PE-92-2018-INIT/en/pdf>
- ²⁷ For the preparation of programmes and activities, the Commission prepares so called „Ex ante evaluations“. See Glossary for further information.

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- ²⁸ OECD, [OECD Regulatory Policy Outlook 2018](#), 2018, figure 2.19 and 2.20.
- ²⁹ So-called “Regulatory impact assessment” defined by the OECD as the systematic process of identification and quantification of benefits and costs likely to flow from regulatory or non-regulatory options for a policy under consideration.
- ³⁰ OECD, [OECD Regulatory Policy Outlook 2018](#), 2018, figure 2.30 and 2.31.
- ³¹ Ex-post review is a policy tool resulting in a document or set of documents presenting a retrospective stocktaking of one or all aspects of an EU regulatory intervention (be it one or more legislative acts), with or without evaluative elements.
- ³² European Court of Auditors, [special report 16/2018: Ex-post review of EU legislation: a well-established system, but incomplete](#), 2018, Executive Summary.
- ³³ European Court of Auditors, Annual Report 2013, 2014.
- ³⁴ European Court of Auditors, [special report 3/2010: Impact Assessments in the EU institutions: do they support decision making?](#), 2010, Executive Summary.
- ³⁵ Commission, [Taking Stock of the Commission’s Better Regulation Agenda](#), SWD(2019)156, chapter 4.1.
- ³⁶ Impact Assessment Institute, [Absence of Impact Assessment often not justified or contrary to Better Regulation](#), 2018.
- ³⁷ European Parliament, Political assessment of the implementation of the 2016 Inter-institutional Agreement on Better Law-Making, D200329, 13.02.2019.
- ³⁸ RegWatchEurope, [Key messages to the next European Commission and European Parliament \(2019-2024\) on priorities for the Better Regulation Agenda](#), February 2019 or Elisabeth Golberg, ‘Better Regulation’: European Union Style, page 71, 2018.
- ³⁹ For the preparation of programmes and activities, the Commission prepares so called „Ex ante evaluations“. See Glossary for further information.
- ⁴⁰ European Court of Auditors, [ECA remarks in brief on the Commission's legislative proposals for the next multiannual financial framework](#), page 22, 2019.
- ⁴¹ European Court of Auditors, special report 3/2010, [Impact Assessments in the EU institutions: do they support decision-making](#), paragraph 86 and the following.
- ⁴² European Court of Auditors, special report 34/2016, [Combating Food Waste: an opportunity for the EU to improve the resource-efficiency of the food supply chain](#), paragraph 45; Special Report 10/2017, [EU support to young farmers should be better targeted to foster effective generational renewal](#), paragraph 20; Special Report 24/2018, [Demonstrating carbon capture and storage and innovative renewables at commercial scale in the EU: intended progress not achieved in the past decade](#), paragraph 58.
- ⁴³ RSB, [Annual Report 2018](#), chapter 3.4.
- ⁴⁴ RSB, [Annual Report 2018](#), chapter 1.2.
- ⁴⁵ European Court of Auditors, special report 16/2018: [“Ex-post review of EU legislation: a well-established system, but incomplete”](#), p. 10.
- ⁴⁶ Out of the 51 cases analysed, in 11 cases (22 %) the evaluation was not prepared, in 14 (27 %) the evaluation was inadequate and in 11 (22 %) the evaluation was not properly used; see RSB, [Annual Report 2018](#), chapter 3.5.
- ⁴⁷ Commission, [Taking Stock of the Commission’s Better Regulation Agenda](#), SWD(2019)156, chapter 6.2.
- ⁴⁸ European Court of Auditors, special report 10/2017 [“EU Support to young farmers should be better targeted to foster effective generational renewal”](#), paragraph 20; special report 5/2016 [“Has the Commission ensured effective implementation of the Services Directive?”](#), paragraph 37 and special report 3/2010 [“Impact Assessments in the EU institutions: do they support decision-making?”](#), paragraph 86.
- ⁴⁹ RSB, [Annual Report 2018](#), chapter 1.3.
- ⁵⁰ Stakeholder’s viewpoint as reported in the Commission’s document, [Stocktaking of the Commission's Better Regulation approach – Summary report of contributions to the public consultation](#), 2019, page 19. For further information see: ECA, [special report 16/2018: Ex-post review of EU legislation: a well-established system, but incomplete](#), paragraph 62 and Bruegel, [Braver, greener, fairer: Memos to the new EU leadership 2019 - 2024](#), 2019, page 77.
- ⁵¹ Bruegel, [Braver, greener, fairer: Memos to the new EU leadership 2019 - 2024](#), 2019, page 77.
- ⁵² Stakeholders viewpoint as reported in the Commission’s document, [Taking Stock of the Commission’s Better Regulation Agenda](#), SWD(2019)156, section II, point 4.3.
- ⁵³ Commission, [Taking Stock of the Commission’s Better Regulation Agenda](#), SWD(2019)156, section II, point 4.3
- ⁵⁴ The main overall evaluations are included, but not the underlying thematic or geographic evaluations. Commission, [Taking Stock of the Commission’s Better Regulation Agenda](#), SWD(2019)156, section II
- ⁵⁵ Since 2016, the RSB also reviewed 51 evaluations attached to impact assessments. When an impact assessment arrives together with an evaluation of what is already in place, the RSB does not issue a separate opinion on the evaluation (RSB, [Annual Report 2018](#), chapter 1.1).
- ⁵⁶ ECA Analysis based on EUR-Lex data.
- ⁵⁷ Commission, [Better regulation: big on the big things and small on the small things](#), 2019.

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- ⁵⁸ Commission, [Commission decision of establishing the REFIT Platform](#); 2015, Article 2.
- ⁵⁹ Commission, [Stocktaking of the Commission's better regulation approach – Summary report of contributions to the public consultation](#), 2019, page 21.
- ⁶⁰ European Court of Auditors, [opinion No 7/2018 concerning Commission proposals for regulations relating to the common agricultural policy for the post-2020 period](#), paragraph 5.
- ⁶¹ European Court of Auditors, [Landscape Review: Putting EU law into practice](#), 2018, paragraph 33.
- ⁶² Commission, [Taking Stock of the Commission's Better Regulation Agenda](#), SWD(2019)156, section 2, chapter 6.4.
- ⁶³ This was established by the [Joint Political Declaration of 28 September 2011 of Member States and the Commission on explanatory documents \(OJ 2011/C 369/02\)](#) and the [Joint Political Declaration of 27 October 2011 of the European Parliament, the Council and the Commission on explanatory documents \(OJ 2011/C 369/03\)](#).
- ⁶⁴ European Court of Auditors, [Landscape Review: Putting EU law into practice](#), 2018, paragraph 134.
- ⁶⁵ Commission, [Monitoring the application of European Union law - 2018 Annual Report](#), published 2019, chapter I point 1.
- ⁶⁶ ECA, [special report: The integrity and of implementation of the EU ETS](#), 2015, paragraph 75; [special report: Has the Commission ensured effective implementation of the Services Directive](#), paragraph 45; and [special report: Basic Payment Scheme for farmers](#), 2018, paragraph 34.
- ⁶⁷ European Parliament, [Resolution of 14 June 2018 on monitoring the application of EU law 2016](#), 2018, point 7.
- ⁶⁸ See also [European Court of Auditors opinion No 1/2018 concerning the proposal of 2 May 2018 for a regulation of the European Parliament and of the Council on the protection of the Union's budget in case of generalised deficiencies as regards the rule of law in the Member States](#).
- ⁶⁹ [Inter-institutional Agreement between the European Parliament, the Council of the European Union and the European Commission on Better Law-Making](#); OJ L 123, 12.05.2016, paragraph 15.
- ⁷⁰ European Parliament, [The work of EPRS: 2014 to 2018](#), PE 637.954, 2019.
- ⁷¹ [Inter-institutional Agreement between the European Parliament, the Council of the European Union and the European Commission on Better Law-Making](#); OJ L 123, 12.05.2016, paragraph 39.
- ⁷² <https://webgate.ec.europa.eu/regdel/#/home>
- ⁷³ [Inter-institutional Agreement between the European Parliament, the Council of the European Union and the European Commission on Better Law-Making](#); OJ L 123, 12.05.2016, paragraph 29.
- ⁷⁴ Joint Research Center, [The debate on the EU Better Regulation Agenda: a literature review](#), chapter 3 „Stakeholder consultation, participation and involvement“, 2019.
- ⁷⁵ For an act to be adopted under the ordinary legislative procedure, both co-legislators, assisted by the Commission, often negotiate in so-called “trilogues”, which are informal meetings between the representatives of the three institutions involved, aimed at reaching early agreements on new EU legislation.
- ⁷⁶ European Ombudsman, [Transparency of Trilogues \(strategic inquiry OI/8/2015/JAS\)](#), Decision published in July 2016.
- ⁷⁷ Commission, [Commission reply to the follow-up request for information in relation to the Ombudsman's own-inquiry OI/8/2015/JAS](#), 2018.
- ⁷⁸ European Court of Justice, Case T-540/15, [Judgement of the General Court](#), ECLI:EU:T:2018:167, 2018.
- ⁷⁹ Jan Brandsma, [Transparency of EU informal trilogues through public feedback in the European Parliament: promise unfulfilled](#), *Journal of European Public Policy*, Vol. 26, number 10, 2019, page 1464-1482, p. 1470.
- ⁸⁰ https://ec.europa.eu/commission/presscorner/detail/en/STATEMENT_19_1152
- ⁸¹ <http://www.europarl.europa.eu/legislative-train/theme-union-of-democratic-change/file-inter-institutional-agreement-on-a-mandatory-transparency-register-for-lobbyists>
- ⁸² ECA, based on Commission diagrams of the Better Regulation toolbox.

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